

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-7027

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JAMES D. McMILLEN,

Plaintiff-Appellant,

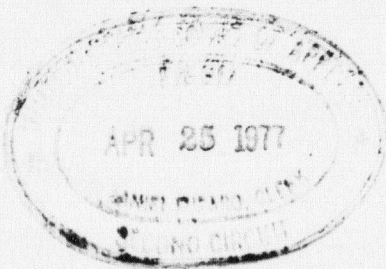
VS

NO. 77-7027

LOUIS J. LEEFKOWITZ,

Defendant-Appellee.

APPENDIX



Prepared by:

JAMES D. McMILLEN
Appellant Pro Se
5325 Sanders Road
Toledo, Ohio 43615
(419) 385-5108

PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX

Index of pleadings, prepared by the Northern District of New York	1
Record and Certification	4
Plaintiff's exhibits:	
1. Certificate of incorporation of Therapeutic Hypnosis, Inc.	8
2. Letter of Feb 14, 1975 from Atty Nicholas Grasso to Louis J. Lefkowitz	11
3. Letter of Feb 25, 1975 from George A. Cushing, Asst. Atty Gen, to Nicholas Grasso, withdrawing Subpoena duces tecum.	13
4. Order of the Supreme Court indicating settlement as to disposition of records held by accounting firm	15
5. Subpoena Duces tecum dated February 14, 1975	19
6. Subpoena Duces tecum dated February 14, 1975	22
7. Subpoena Duces tecum dated January 17, 1975	25
* 8. Affidavit of I.R.S. agent Barbara Herdman	28
9. Motion for Reargument - Supreme Court Proceeding	37
Defendant's exhibits:	
A. Advertisement in New York Times dtd 3-5-75	57
B. Petition - Supreme Court proceeding	53
C. Decision of Justice STaley	70
D. Newspaper article of August 14, 1975	77
* E. Brochure of Therapeutic Hypnosis Inc.	77
F. Letter of Education Dept. dated 10-2-75	82
G. Memorandum from Geo. Cushing to Louis Lefkowitz dated March 4, 1975	88
H. Memorandum of Geo. Cushing to the files dated March 20, 1975	92
I. Memorandum of Frank Pantalone to staff dated August 8, 1974	95
Plaintiff's Notice of Appeal	98
Transcript of the Judgment of Nov. 19, 1976	100

* Introduced for identification only - not admitted.

INDEX OF PLEADINGS PREPARED
BY THE NORTHERN DISTRICT OF
NEW YORK.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JAMES D. McMILLEN
Plaintiff-Appellant

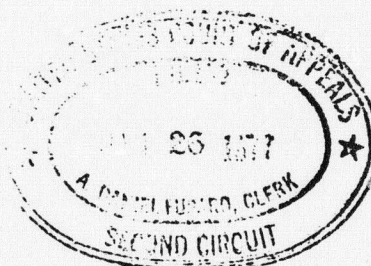
vs

LOUIS J. LEFKOWITZ
Defendant-Appellee

Northern District of
New York
Civil No. 75-CV-427

I N D E X

	<u>Page</u>
Docket entries	A-B
Complaint	1
Summons	7
Motion to Dismiss	8
Affidavit in opposition	14
Order	19
Judgment	20
Answer to Complaint	21
Opinion of Justice Staley	23
Requests to Charge	30
Judgment	33
Motion for New Trial w/ endorsement of Judge Foley	34
Affidavit in opposition	49
Notice of Appeal	51
Notice of Change of Address	52
Envelope containing exhibits	53
Clerk's Certificate	54



2

6	75-CV-427	08-27-75	3	440	1	7,000,	NUMBER	JURY DEM.	P	V
---	-----------	----------	---	-----	---	--------	--------	-----------	---	---

PLAINTIFFS

MC MILLEN, JAMES D.

DEFENDANTS

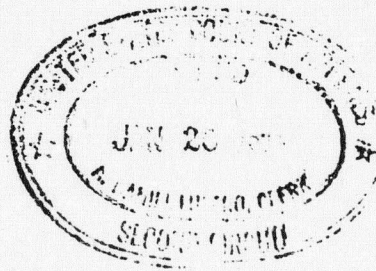
LEFKOWITZ, LOUIS J., INDIVIDUAL
and as the ATTORNEY GENERAL OF
THE STATE OF NEW YORK, and the
STATE OF NEW YORK

CAUSE Plaintiff alleges that the defendant
illegally and unlawfully used Plaintiff's
personal property which constitutes an invasion
of Plaintiff's civil liberties.

ATTORNEYS

James D. Mc Millen, Pro se
601 Elmwood Ave.
Lincoln, Nebraska
New address:
5325 Sanders Rd.
Toledo, Ohio

Hon. Louis J. Lefkowitz
Attorney General, State of New York
Dept. of Law, The Capitol
Albany, N.Y.



17-7027
LA

3

☐ CHECK HERE IF CASE WAS	FILING FEES PAID			STATISTICAL CARDS
	DATE 8/28/75	RECEIPT NUMBER 44726	C.D. NUMBER 17	CARD DATE MAILED

RECORD AND CERTIFICATION

NORTHERN DISTRICT OF NEW YORK

JAMES D. MCMILLEN
Plaintiff-Appellant

vs

LOUIS J. LEFKOWITZ
Defendant-Appellee

Northern District of
New York
Civil No. 75-CV-427

I, J. R. Scully, Clerk of the District Court of the
United States for the Northern District of New York, DO
HEREBY CERTIFY that the foregoing docket entries and
original papers numbered from ⁵⁴ ~~54~~ ⁵⁵ to inclusive,
constitute the Record on Appeal in the above entitled
action; and

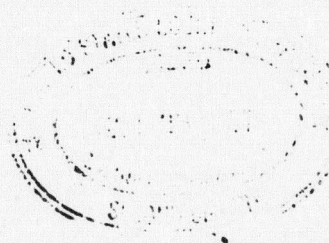
I DO FURTHER CERTIFY that the time to file the
Record of Appeal expires Supplemental

IN TESTIMONY WHEREOF, I have
hereunto set my hand and
caused the Seal of said
Court to be hereto affixed
at the City of Utica, New
York, this 27th day of
January, 1977.

J. R. SCULLY, CLERK
U. S. District Court

Rec'd 1/28/77

By: *[Signature]*
Allen B. Doggett
Deputy Clerk



77-7027

sup

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

JAMES D. McMILLEN
Plaintiff-Appellant

vs

LOUIS J. LEFKOWITZ
Defendant-Appellee

Northern District of
New York
Civil No. 75-CV-427

Supplemental Index

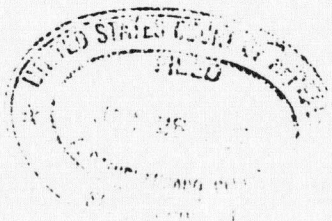
Page

Envelope containing Defts Exhibits

54

Clerk's Certificate

55



JAMES D. McMILLEN
Plaintiff-Appellant

Northern District of

Rec'd 11/17/75

1975	NR.	PROCEEDINGS
Aug. 27	1	Filed complaint-issued summons-orig. & 2 copies
" 28		Delivered summons to Marshall for service
Sept. 4	2	Filed summons served 9/2/75 on Louis J. Lefkowitz through Francis V. Dow, Ass't Attorney General, 9/2/75 on Secretary of State, State of New York through Glenn Relyea
Sept. 18	3	Filed Motion to Dismiss Complaint, returnable October 27, 1975 at Utica and Affidavit in Support of Motion of Douglas S. Dales, Jr.
Oct. 23	4	Filed Affidavit in Opposition to the motion to dismiss the complaint
Oct. 28		Motion to Dismiss Granted as to the State of New York. Motion to Dismiss as to Lefkowitz-Denied without prejudice.
Oct. 31	5	Filed Order of Judge Port (10/30/75) that the motion to dismiss is granted as to the defendant the State of New York, and denied in all other respects
Oct. 31	6	Filed Judgment and mailed cards re: Judgment to Hon. Louis J. Lefkowitz Attorney General
Nov. 4	7	Filed Answer
1976		
Oct. 22	8	Filed Note of Issue for November, 1976 Term of Court at Albany-Jury
Nov. 16		TRIAL. PRE-TRIAL CONFERENCE- 1 hr. Jury Drawn and Sworn. Motions made both sides that witnesses be excluded. Granted. Witnesses for Plaintiff.
Nov. 17		TRIAL CONTINUED. Witnesses for Plaintiff.
Nov. 18		TRIAL CONTINUED. Pre-Trial Conference-20 Minutes. Witnesses for Plaintiff. Defendant moves for a directed verdict. Decision Reserved.
Nov. 19		TRIAL CONTINUED. Pre-Trial Conference-1/2 hr. Witnesses for Defendant. Defendant renews motion for a directed verdict. Decision Reserved.
Nov. 19	9	Filed copy of decision of Justice Ellis J. Staley, Jr., dated 10/27/76
Nov. 19	10	Filed requests to charge
Nov. 19	11	Filed Judgment and mailed cards; re: Judgment to James D. McMillen and Hon. Louis J. Lefkowitz, ATTN: Douglas S. Dales, Jr.
Dec. 3	12	Filed Notice of Motion for New Trial, returnable Dec. 20, 1976 at Albany, Affidavit of James D. McMillen and Memorandum of Law
Dec. 15	13	Filed Affidavit of Douglas S. Dales, Jr. in Opposition to Motion for New Trial
Dec. 20		Motion for new trial- motion denied, motion endorsed in Court by Judge James T. Foley
Dec. 20	14	Filed endorsement of Judge Foley (dated 12/20/76) within Notice of Motion filed 12/3/76 denying the Motion for a New Trial. So ordered.
Dec. 20	15	Filed Notice of Appeal
Dec. 27	16	Filed Notice of Change of Address

Deputy Clerk



102

CERTIFICATE OF INCORPORATION OF
THERAPEUTIC HYPNOSIS, INC.
(Plaintiff's Exhibit (1))

[illegible]

DECLARATION OF INTEREST

OF

THE BOARD OF DIRECTORS

AND THE STOCKHOLDERS OF THE COMPANY

IN WITNESS WHEREOF, the Board of Directors and the Stockholders have caused this Declaration to be signed by their respective officers and members, and have caused it to be attested by the Secretary of the Company.

1. The Board of Directors of the Company, and the Stockholders of the Company, do hereby declare that they are not aware of any facts or circumstances which would render the Company liable for the payment of any sum of money to any person or entity, other than the Company, in connection with the Company's operations.

2. The Board of Directors of the Company, and the Stockholders of the Company, do hereby declare that they are not aware of any facts or circumstances which would render the Company liable for the payment of any sum of money to any person or entity, other than the Company, in connection with the Company's operations.

3. The Board of Directors of the Company, and the Stockholders of the Company, do hereby declare that they are not aware of any facts or circumstances which would render the Company liable for the payment of any sum of money to any person or entity, other than the Company, in connection with the Company's operations.

4. The Board of Directors of the Company, and the Stockholders of the Company, do hereby declare that they are not aware of any facts or circumstances which would render the Company liable for the payment of any sum of money to any person or entity, other than the Company, in connection with the Company's operations.

5. The Board of Directors of the Company, and the Stockholders of the Company, do hereby declare that they are not aware of any facts or circumstances which would render the Company liable for the payment of any sum of money to any person or entity, other than the Company, in connection with the Company's operations.

[Signature]
Secretary of the Company

WITNESSED BY ME, the Secretary of the Company, on this day of _____, 19__.

IN WITNESS WHEREOF, the Board of Directors and the Stockholders have caused this Declaration to be signed by their respective officers and members, and have caused it to be attested by the Secretary of the Company.

[Signature]
President of the Company

LETTER OF FEBRUARY 14, 1975 FROM ATTY.
NICHOLAS GRASSO, TO LOUIS J. LEFKOWITZ.
(Plaintiff's exhibit (2))

February 14, 1975

Louis J. Lefkowitz
Attorney General
State of New York
Albany, New York

Re: Subpoena Duces Tecum
Therapeutic Hypnosis Inc.
Our File No. 8775

Dear Sir:

On behalf of James D. McMillan and Stephen Martin, as officers and agents of Therapeutic Hypnosis, Inc., it hereby requested that the Subpoena duces tecum issued by George A. Cushing, assistant Attorney General on the 14th day of February, 1975, be withdrawn on the grounds that the same is illegal, too broad in scope, required illegal compliance, the method of compliance so demanded was illegal and the terms of compliance were impossible to be complied with; that the fee was improperly tendered and that the method of service and the use of the Subpoena to search the premises of the said Therapeutic Hypnosis, Inc., was in violation of the Constitutional Rights of my clients and constituted illegal search and seizure.

Very truly yours,

NICHOLAS J. GRASSO
NJG/jc



LETTER OF FEBRUARY 25, 1975 FROM
GEORGE A. CUSHING TO NICHOLAS GRASSO
WITHDRAWING SUBPOENA DUCES TECUM.
(Plaintiff's exhibit (3))



STATE OF NEW YORK

DEPARTMENT OF LAW

ALBANY, N. Y. 12224

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL

In reply please refer to:
GEORGE A. CUSHING
Telephone: (518) 474-6342

February 25, 1975

Nicholas J. Grasso, Esq.
751 State Street
Schenectady, New York 12307

Dear Mr. Grasso:

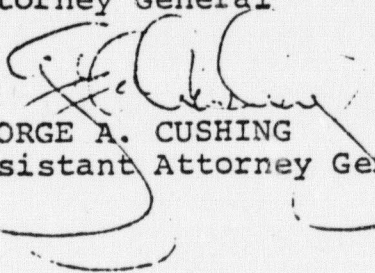
Re: Matter of the Investigation of Therapeutic Hypnosis Inc.

Pursuant to your request of February 14, 1975, the subpoena issued by this office and addressed to James D. McMillan and Stephen Martin, as officers and agents of Therapeutic Hypnosis Inc., is hereby withdrawn without prejudice. Please see that the subpoena fee is properly returned to this office so that our books may be kept in order.

Furthermore, I must strongly object to the accusation contained in your letter that any search of the business premises of Therapeutic Hypnosis Inc., was conducted by any agent or employee of this office on February 14, 1975.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General

By 
GEORGE A. CUSHING
Assistant Attorney General

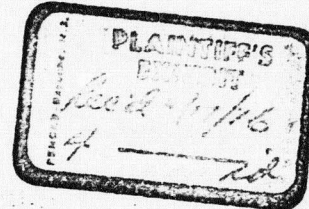


ORDER OF THE SUPREME COURT INDICATING
SETTLEMENT AS TO DISPOSITION OF RECORDS
HELD BY ACCOUNTING FIRM
(Plaintiff's Exhibit (4))

1975, the ...
1975, the ...
March 17, 1975, ...
At a Special Term, Part I, of the
Supreme Court of the State of
New York, held in the County of
Albany, at the County Courthouse
in the City of Albany, on the 1st
day of April, 1975.

PRESENT:

HONORABLE HAROLD J. HUGHES, JR.
Justice of the Supreme Court



**In the Matter of the Application of
THERAPEUTIC HYPNOSIS, INC.,**

Petitioner,

ORDER

for an Order, pursuant to Article 78
of the Civil Practice Law and Rules,
quashing a certain subpoena,

INDEX NO.

April 15, 1975
- against -

4463-75

**HON. LOUIS J. LEFKOWITZ, Attorney General
of the State of New York,**

Peat, Marwick, Main & Company, Inc.
Respondent.

**Petitioner, Therapeutic Hypnosis, Inc., having moved
for an order quashing and vacating a subpoena duces tecum,
dated February 14, 1975, issued by respondent to Peat, Marwick,
Main & Company, Inc., which subpoena shall now be over to the
Mitchell & Company, now**

**Attorney General, and the provisions of the
subpoena UPON the order to show cause, signed by Honorable
Edmund L. Shea, Justice of the Supreme Court, on March 14,**

1975, the affidavit of James D. McMillen, sworn to March 14, 1975, the affidavit of George A. Cushing, Esq., sworn to March 27, 1975, the affidavit of Kenneth J. Connolly, Esq., sworn to March 27, 1975, and upon all the papers and proceedings heretofore had herein and petitioner having appeared by Nicholas J. Grasso, Esq., by Terry Walsh, Esq., of counsel, and respondent having appeared pro se, by Kenneth J. Connolly, Esq., of counsel, and the parties having stipulated and consented to entry of an order herein, it is

ORDERED, that the stay contained in the order to show cause signed by Honorable Edmund L. Shea shall expire on April 15, 1975 at 1 p.m., and it is

FURTHER ORDERED, that on or before April 8, 1975, Peat, Marwick, Mitchell and Company, Certified Public Accountants, shall deliver to petitioner and respondent an inventory of all records in the possession of Peat, Marwick, Mitchell and Company on April 1, 1975; the inventory so delivered shall contain a statement of those records which Peat, Marwick, Mitchell and Company shall turn over to the Attorney General in accordance with the provisions of the subpoena duces tecum, and it is

FURTHER ORDERED, that on April 15, 1975 at 1 p.m., Peat, Marwick, Mitchell and Company shall deliver to the Attorney General all records of petitioner, in possession of Peat, Marwick, Mitchell and Company on April 1, 1975 and which are contained in the statement set forth in the preceding decretal paragraph, and it is

FURTHER ORDERED, that the agreement of the parties herein is without prejudice to the rights of the parties to seek a further order of this Court with regard to any documents in possession of Peat, Marwick, Mitchell and Company, and it is

FURTHER ORDERED, that this agreement is without prejudice to the authority of the Attorney General to issue subpoenas to any other person, firm or corporation in connection with the investigation of petitioner's activities.

DATED: Albany, New York
April 2, 1975

S/ Harold J. Hughes

Harold J. Hughes, Jr.
Justice of the Supreme Court

SUBPOENA DUCES TECUM DATED FEB 14, 1975
(Plaintiff's Exhibit (5))

THE PEOPLE OF THE STATE OF NEW YORK

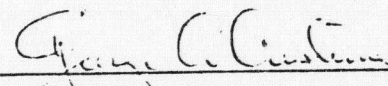
TO: James D. McMillan and Stephen Martin
as officers and agents of
THERAPEUTIC HYPNOSIS, INC.
434 State Street
Schenectady, New York

GREETING:

WE COMMAND YOU, That all business and excuses being laid aside, you and each of you appear and attend before LOUIS J. LEFKOWITZ, Attorney General of the State of New York, on the 14th day of February, 1975, forthwith, or any adjourned date or time thereof, at the Justice Building, Room 229, South Mall, Albany, New York, to testify what you and each of you may know in an inquiry by the Attorney General to determine whether an application should be made or an action should be instituted, pursuant to subdivision 12 of section 63 of the Executive Law against THERAPEUTIC HYPNOSIS, INC., and/or JAMES D. McMILLAN, and bring with you and produce at the time and place aforesaid, all records in your possession relating to all bank records of Therapeutic Hypnosis, Inc.; to wit: passbooks, deposit slips and bank statements and checkbooks, checking records and/or stubs; all records pertaining to employees including payroll records and information relating to Federal and State withholding tax and Social Security payments for each and every employee employed by Therapeutic Hypnosis, Inc., during the period from January 1, 1973 through January 1, 1975; all records of the corporate assets of Therapeutic Hypnosis, Inc., including corporate books, ledgers and accounts and annual or semi-annual accountant's reports or balance statements; all appointment books for Therapeutic Hypnosis, Inc., branch offices located in Schenectady, Utica, Syracuse, Rochester, Buffalo, Binghamton and Poughkeepsie, New York, for the period from January 1, 1973 through January 1, 1975, (which are in your possession and) which the Attorney General deems relevant, and material to this inquiry. And for a failure to attend on that day or on any

adjourned date or time thereof and to produce the items herein specified, you will be liable, in addition to any other punishment which may be lawfully inflicted therefor, for the damages sustained by the person aggrieved, in consequence of the failure, and Fifty Dollars in addition thereto.

WITNESS, Honorable LOUIS J. LEFKOWITZ, Attorney General of the State of New York, the 14th day of February, One Thousand Nine Hundred and Seventy-five.


George A. Cushing
Assistant Attorney General

The Witness is bound by this Subpoena to appear at the trial, hearing or examination and at any adjourned date thereof --
CPLR 2305.

SUBPOENA DUCES TECUM DATED FEB 14, 1977
Plaintiff's Exhibit (6)



THE PEOPLE OF THE STATE OF NEW YORK

TO: Peat, Marwick, Mitchell & Company
50 Wolf Road
Albany, New York 12205

GREETING:

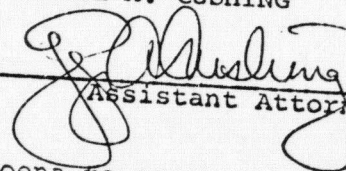
WE COMMAND YOU, That all business and excuses being laid aside, you and each of you appear and attend before LOUIS J. LEFKOWITZ, Attorney General of the State of New York, on the 14th day of February, 1975, ^{FORTHWITH} at ~~---o'clock in the~~ ~~noon~~ thereof, or any adjourned date or time thereof, at the Justice Building, Room 229, South Mall, Albany, New York, to testify what you and each of you may know in an inquiry by the Attorney General to determine whether an application should be made or an action should be instituted, pursuant to subdivision 12 of section 63 of the Executive Law against

Thereapeutic Hypnosis, Inc.
or deliver to the Attorney General's agents and bring with you and produce at the time and place aforesaid, all records in your possession relating to all bank records of Therapeutic Hypnosis, Inc.; to wit: passbooks, deposit slips and bank statements and checkbooks, checking records and/or stubs; all records pertaining to employees including payroll records and information relating to Federal and State withholding tax and Social Security payments for each and every employee employed by Therapeutic Hypnosis, Inc., during the period from January 1, 1973 through January 1, 1975; all records of the corporate assets of Therapeutic Hypnosis, Inc., including corporate books, ledgers and accounts and annual or semi-annual accountant's reports or balance statements; all appointment books for Therapeutic Hypnosis, Inc., branch offices located in Schenectady, Utica, Syracuse, Rochester, Buffalo, Binghamton and Poughkeepsie, New York, for the period from January 1, 1973 through January 1, 1975, which the Attorney General deems relevant and material to the inquiry. And for a failure to attend on that day or on any adjourned date or time thereof and to produce the items herein specified, you will be liable, in addition to any other punishment which may be lawfully inflicted therefor, for the

damages sustained by the person aggrieved, in consequence of the failure, and Fifty Dollars in addition thereto.

WITNESS, Honorable LOUIS J. LEFKOWITZ, Attorney
General of the State of New York, the 14th day of February
five.
One Thousand Nine Hundred Seventy-~~four~~.

GEORGE A. CUSHING



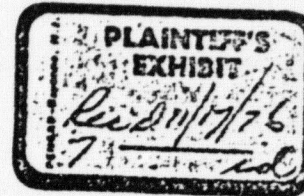
Assistant Attorney General

The Witness is bound by this Subpoena to appear at the trial,
hearing or examination and at any adjourned date thereof --
CPLR 2305.

SUBPOENA DUCES TECUM DATED JAN 17, 1975
(Plaintiff's Exhibit (7))

THE PEOPLE OF THE STATE OF NEW YORK

TO: SANDRA CADAN
1465 Lexington Ave.
Schenectady, New York

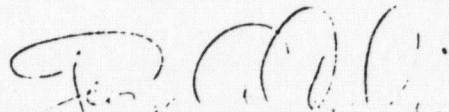


GREETING:

WE COMMAND YOU, that all business and excuses being laid aside, you and each of you produce forthwith and surrender to an agent of Louis J. Lefkowitz, Attorney General of the State of New York, all records, documents, papers, notes, memoranda, appointment books and materials of whatever kind and whatever nature relating to the business and affairs of either James D. McMillian and/or Therapeutic Hypnosis, Inc., a domestic corporation which is required in an inquiry by the Attorney General to determine whether an application should be made or an action should be instituted pursuant to subdivision 12 of section 63 of the Executive Law and which the Attorney General deems relevant and material to the inquiry. For a failure to produce the items herein specified, you will be liable, in addition to any other punishment which may be lawfully inflicted therefor, for the damages sustained by the person aggrieved, in consequence of the failure, and Fifty Dollars in addition thereto.

WITNESS, Honorable LOUIS J. LEFKOWITZ, Attorney

General of the State of New York, the 17th day of January,
One Thousand Nine Hundred Seventy-five.



Assistant Attorney General

The Witness is bound by this Subpoena to appear at the trial,
hearing or examination and at any adjourned date thereof --
CPLR 2305.

AFFIDAVIT OF I.R.S. AGENT BARBARA HERDMAN
(Plaintiff's exhibit (8) - introduced
for identification only - not admitted)

JAMES D. MCMILLEN,

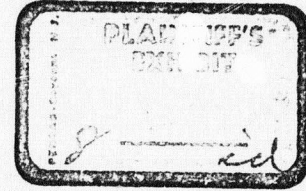
Plaintiff

v.

BARBARA HERDMAN and
PAUL HOLTERMANN

Defendants

Civil No. 76-CV-63



A F F I D A V I T

BARBARA J. HERDMAN, being first duly sworn, deposes and says:

1. I am a Revenue Officer in the Schenectady Group of the Albany District, Internal Revenue Service.

2. My duties, as described in the attached IRS Standard Position Description No. 420, which is incorporated herein by reference, include the responsibility for applying the entire range of administrative and judicial remedies available for use in the collection and assessment of taxes. This includes the responsibility for employing a wide variety of investigative techniques and for selecting from the complete range of analysis and investigative techniques, those methods needed to determine the collectibility of delinquent accounts. Complex questions frequently must be resolved by extensive factual investigations for the purpose of conducting 100 per cent penalty assessment reviews, the filing of federal tax liens and levies, and conducting seizures and sales of real and personal property in order to protect the priority rights of the Government.

3. I have reviewed the complaint in the action entitled James D. McMillen v. Barbara Herdman and Paul Holtermann filed in the United States District Court for the Northern District of New York, Civil No. 76-CV-63.

4. I have fully reviewed all of the records in the Schenectady IRS office pertaining to the plaintiff and plaintiff's corporation, Therapeutic Hypnosis, Inc. and have set

Therapeutic Hypnosis, Inc.

5. In late March, 1975, the Schenectady Internal Revenue Service Office received a Federal Tax Deposit Alert notice concerning the corporate taxpayer, Therapeutic Hypnosis, Inc. The purpose of this notice is to initiate an examination of the current depository requirements of a taxpayer which has had prior trust fund liabilities of at least \$12,000 per quarter. On the date of receipt of this notice, Revenue Officer Paul Sunkes performed the required review and determined that Therapeutic Hypnosis, Inc. had several outstanding trust fund liabilities (employee withholding taxes). At this time Revenue Officer Sunkes advised two corporate officers, Mr. Louis Verderose, President and Mr. Steven Martin, Vice-President-Comptroller, to commence making the required Federal Tax Deposits immediately and to assemble the corporate records necessary for preparing financial statements and making an income analysis. Also at this time, Group Manager Paul Holtermann requested that these outstanding trust fund liability accounts be issued to the field for collection as soon as possible.

6. On April 9, 1975, Taxpayer Delinquent Accounts totalling \$128,425.02 for Therapeutic Hypnosis, Inc. were received in the Schenectady office and were assigned to me for collection.

7. The preliminary investigation conducted by me disclosed that the responsible corporate officer, Mr. James D. McMillen, had never filed any tax returns for the corporation; this included the Form 941's (Employer's Quarterly Federal Tax Return for withholding taxes), the Form 940's (Employer's Annual Federal Unemployment Tax Return) and the Form 1120's (Corporation Income Tax Return). Also, Mr. Martin informed me that in January, 1975, when he was appointed Vice-President-Comptroller, he discovered this fact and that he then took

8. On April 10, 1975, I held a conference in the Schenectady IRS office with corporate officers Mr. Louis Verderose and Mr. Steven Martin. At this conference, I made demand for full payment of the corporation's outstanding tax liabilities; however, both officers informed me that the corporation was unable to pay. Also at this conference, I secured a corporate financial statement signed by Mr. Martin and interviewed both of the above officers relative to the possible assertion of 100 percent penalty assessments pursuant to the provisions of Section 6672 of the Internal Revenue Code of 1954. In addition, I requested that the corporate officers set up a conference for April 16, 1975 with Mr. McMillen.

9. Based on the interview with the corporate officers and an analysis of the corporate financial statement, I determined that collection of the \$128,425.02 in outstanding trust fund taxes was in jeopardy and consequently on the same day, April 10, 1975, I filed a Federal tax lien in the county clerk's office pursuant to the provisions of Section 6323 of the Internal Revenue Code of 1954.

10. On April 11, 1975, I initiated six courtesy investigations to various IRS district offices where corporate sub-offices were located, requesting that a Notice of Levy be served on the corporate checking accounts and that photocopies of signature cards and bank resolutions be secured for the purpose of conducting the 100 percent penalty investigations. Also, on this date, the Schenectady Gazette published information pertaining to the filing of the federal tax liens on the previous day.

11. On April 16, 1975, Mr. McMillen failed to keep or cancel the appointment which had been scheduled.

12. On April 17, 1975, I received a telephone call from the New York State Attorney General's Office providing me with

After discussing the situation with Group Manager Paul Holtermann, we made a decision to seize the cash immediately. On this same day, accompanied by Group Manager Holtermann and Revenue Officer Trainee Thomas Crossen, I made a field visit to the corporation's place of business. Corporate officers Verderose and Martin, along with one other employee, were present upon our arrival. We determined that there was no safe, but we did levy upon and seize \$1,385.00 from the cash box, pursuant to the authority of Section 6331 of the Internal Revenue Code of 1954. The cash box was left on the premises. Also, we determined that all office furniture and equipment was encumbered by a prior possessory lien of the landlord, so no further seizure was made and we did not order the business to be closed.

13. Subsequent to the cash register seizure, we were questioned by Mr. Verderose and Mr. Martin as to the extent of their personal liability. We advised both corporate officers that they were being considered for personal liability, under the 100 percent penalty provisions, on the trust fund portion of the outstanding taxes. The corporate officers were obviously apprehensive and inquired as to what steps they should take to absolve themselves of any further personal liability. We advised them that they would be considered for such liability for the entire period during which they exercised control over the corporate affairs. This prompted their immediate resignation. We did not volunteer this suggestion, but their decision to resign was the direct result of their concern as to what steps they could or should take to avoid any further personal liability and to eliminate a continuous cloud over their head.

quarter ended March 31, 1975. This return was filed without remittance and indicated a balance due of \$32,201.57.

15. On April 23, 1975, I made a field visit to the residence of Mr. James McMillen. Mr. McMillen was not at home and we spoke to his sister Vera Vasko who refused to be interviewed but stated that she would inform her brother that the IRS desired to set up an appointment with him.

16. On April 24, 1975, I initiated and forwarded 24 Courtesy Investigations to the IRS district offices of the several states in which Therapeutic Hypnosis, Inc. had sub-offices requesting that liens be filed, levy actions be taken, and possible seizure of assets be investigated. The list of the corporation's sub-offices, with address and bank account information, had been furnished to me by Mr. Martin.

17. On April 25, 1975, I received a telephone call from Mr. Blakely, manager of the Rochester office of Therapeutic Hypnosis, Inc. He stated that he had closed the office and was resigning. He also stated that he was told by Boris Wainio of the Hackensack, New Jersey office to forward all cash to that office. However, he stated that he had deposited \$100 in the Therapeutic Hypnosis, Inc., Rochester checking account. On the same day, I received a telephone call from Mr. Swinelar, manager of the Syracuse Therapeutic Hypnosis, Inc. office, who also stated that he had closed the office and was resigning. Also, on this same day, I received a telephone call from Vera Vasko, Mr. McMillen's sister. She told me that she had spoken with her brother who instructed her not to speak with anyone, not to answer any questions, and also, she would not tell me how I could contact her brother.

18. I have the following comments concerning the specific allegations made by the plaintiff in paragraph 8 of his complaint.

the plaintiff's corporation. Revenue officers are not empowered to "order a closing" and I am well aware of such limitations on my authority. The only action taken on April 17, 1975 was the seizure of the contents of the cash box located in the corporate office of Therapeutic Hypnosis, Inc. This seizure was done in accordance with the provisions of Section 6331 of the Internal Revenue Code. Also, the Notice of Seizure given to the corporate officers at the time of the seizure states that only monies were seized. We did give consideration to seizing the corporate office furniture and equipment, but it was not done since the landlord had a possessory lien superior to the federal tax lien.

8b. I have never met Mr. McMillen, nor have I had any telephone conversations with him. All collection actions which I initiated were done with no personal involvement, without any personal vendetta or maliciousness toward Mr. McMillen, and at all times I acted within the scope of my employment pursuant to the provisions of the Internal Revenue Code.

8c. We did not "collect" Mr. McMillen's employees at the time of the seizure or at any other time. They were in the office when we arrived. The details of what transpired subsequent to the cash register seizure are set forth above in paragraph 13 of this affidavit. The statements which we made to the corporate officers were in response to their questions as to the extent of their personal liability. This action was nothing more than an explanation of their rights and we did not advocate that they resign.

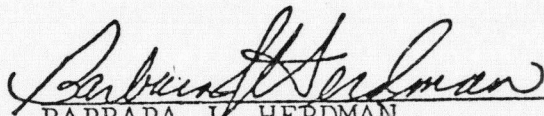
lien filing and related collection actions was required to cover all areas of known or suspected operations. Our courtesy investigation requests to other IRS district offices were sent pursuant to normal accepted Internal Revenue Service procedures. These courtesy investigations requested only such collection actions as we deemed necessary (obtain bank signature cards, conduct 100 percent penalty investigations, file liens, search for assets, etc.), and did not contain any extraneous data or opinions. There was nothing in our courtesy investigation requests which could cause any other "Internal Revenue Service Officer" to make any interpretative statement to depict Mr. McMillen as "the biggest con-man I've ever run into." We did not "supervise malicious slander and defamation of character." We merely attempted to gain necessary information to resolve a very complex, large tax liability.

8e. I am not aware of any such public pronouncements.

8f. I had no contact with any "Major News Media," nor did I knowingly cause the publishing of any news articles. The article published in the Schenectady Gazette on April 11, 1975 regarding the filing of Federal tax liens must have been the result of that newspaper's own research. It is admitted that such large tax liens would be newsworthy in a city the size of Schenectady. At no time was anyone told that Mr. McMillen was "Wanted by the I.R.S." The other officers of the corporation were told that we wanted to

of collecting the unpaid taxes and/or to conduct an interview regarding the possible assessment of the 100 percent penalty on the outstanding trust fund taxes.

19. At all times the above actions were taken within the course and scope of my employment as a Revenue Officer in the Albany District of the Internal Revenue Service, and at all times I acted in good faith and had reasonable grounds for the belief that the actions taken were appropriate.


BARBARA J. HERDMAN
Revenue Officer

Sworn to and subscribed before me this 5th day of May, 1976.


Notary Public

RUTH GRENOBLE
Notary Public, State of New York
Qualified in Schenectady County
My Commission Expires March 30, 1977

MOTION FOR REARGUMENT - SUPREME COURT
PROCEEDING
(Plaintiff's exhibit (9))

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ALBANY

In the Matter of the Application of the
PEOPLE OF THE STATE OF NEW YORK by
LOUIS J. LEFKOWITZ, Attorney General of
the State of New York,

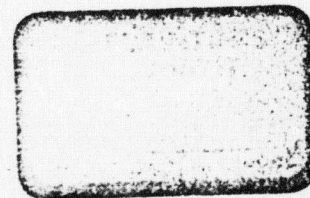
Petitioner

for an Order enjoining and restraining JAMES D.
MCMILLEN, THERAPEUTIC HYPNOSIS, INC., WILLIAM
VASCO, RONALD VASCO and VERA VASCO,
individually and as incorporators, officers
and directors of THERAPEUTIC HYPNOSIS, INC.;
NATIONAL INSTITUTE OF HYPNOSIS PRACTICES, INC.
and JAMES D. MCMILLEN, as incorporator,
officer and director of NATIONAL INSTITUTE OF
HYPNOSIS PRACTICES, INC.,

Respondents,

pursuant to Article 5, section 63, subdivision
12 of the Executive Law, from carrying on,
conducting and transacting business in a per-
sistently fraudulent and illegal manner;
directing restitution for all consumers who
have done and are doing business with respon-
dents; pursuant to Article XI, section 1101(a)
(1) and (2), and Article I, section 109 (a)
of the Business Corporation Law, cancelling any
certificate of incorporation in the name of
Therapeutic Hypnosis, Inc. and National Institute
of Hypnosis Practices, Inc. and ordering disso-
lution of Therapeutic Hypnosis, Inc. and National
Institute of Hypnosis Practices, Inc.; and pursuant
to Article 130, section 6515 of the Education Law
for an Order enjoining and restraining commission
and continuance of unlawful acts complained of herein.

NOTICE



S I R S:

PLEASE TAKE NOTICE that respondent JAMES D. MCMILLEN

will move, before Justice Ellis Staley, at a special hearing of this Court, to be held at the Albany County Courthouse in Albany, New York, at a date and time to be set by the Judge; for renewal argument against petitioner's application.

DATED:

Yours etc.,

JAMES D. MCMILLEN
Respondent Pro Se
Office & P.O. Address
309 Anderson Building
Lincoln, Nebraska 68508
(402) 474-1642

TO: LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Office & P.O. Address
The Capitol
Albany, New York
(George A. Cushing, Asst.
Atty. Gen. of Counsel)

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ALBANY

In the Matter of the Application of the
PEOPLE OF THE STATE OF NEW YORK by
LOUIS J. LEFKOWITZ, Attorney General of
the State of New York,

Petitioner,

for an Order enjoining and restraining JAMES D.
-MCMILLEN, THERAPEUTIC HYPNOSIS, INC., WILLIAM
-VASCO, RONALD VASCO and VERA VASCO,
individually and as incorporators, officers
and directors of THERAPEUTIC HYPNOSIS, INC.;
NATIONAL INSTITUTE OF HYPNOSIS PRACTICES, INC.
and JAMES D. MCMILLEN, as incorporator,
officer and director of NATIONAL INSTITUTE OF
HYPNOSIS PRACTICES, INC.,

Respondents,

pursuant to Article 5, section 63, subdivision
12 of the Executive Law, from carrying on,
conducting and transacting business in a per-
sistently fraudulent and illegal manner;
directing restitution for all consumers who
have done and are doing business with respon-
dents; pursuant to Article XI, section 1101(a)
(1) and (2), and Article I, section 109 (a)
of the Business Corporation Law, cancelling any
certificate of incorporation in the name of
Therapeutic Hypnosis, Inc. and National Institute
of Hypnosis Practices, Inc. and ordering disso-
lution of Therapeutic Hypnosis, Inc. and National
Institute of Hypnosis Practices, Inc.; and pursuant
to Article 130, section 6515 of the Education Law
for an order enjoining and restraining commission
and continuance of unlawful acts complained of herein.

MOTION FOR
RENEWAL ARGUMENT

Now comes the respondent JAMES D. MCMILLEN, pro se, who
in and through this motion, moves for renewal argument against the
petitioner's application for summary judgment for the following reasons.

1. JUDGMENT OF THE SUPREME COURT OF
ALBANY COUNTY IS IN ERROR AND HIGHLY
PREJUDICIAL TO THE RESPONDENT.

a. Judgment against JAMES D. MCMILLEN is in part alleged to stem from an assertion by the Court that his affidavit opposing summary judgment was not timely filed.

b. The C.P.L.R. does not require that his affidavit be attached to his answer; but rather, permits it to become apart of his Memorandum of Law in opposition to petitioner's application. This it was. Therefore, it was timely presented to the court.

2. JUDGMENT OF THE SUPREME COURT OF
ALBANY COUNTY IMPROPERLY APPLIED
JUDICIAL PROCEDURES IN REVIEWING AFFIDAVITS
PRESENTED TO THE COURTS.

a. Procedures in reviewing evidence before a summary judgment hearing are such that evidence shall not be accepted which would be ruled unacceptable or inadmissable in the instance of trial.

b. The affidavit of George A. Cushing does not meet the requirements of admissable in the instance of trial.

c. It must be noted that petitioner did not originally seek summary judgment. In petitioner's affidavit in opposition to respondents Motion to Dismiss, petitioner requested the court to order respondent five days within which to answer.

d. When petitioner was not seeking summary judgment, but only opposing a motion to dismiss, the Attorney General conceded that the Cushing affidavit was hearsay. 41

e. In his opposition to a motion to dismiss, the Attorney General justifies the use of the hearsay Cushing affidavit as being permissible "in proceedings collateral to trial".

f. While hearsay evidence may at times be admissible in proceedings collateral to trial; it is not admissible as the "sole" basis for summary judgment, when an opposing affidavit is presented.

g. Further, the hearsay affidavit of George Cushing lacks verification or statement that its' contents are either of personal knowledge, or of information and belief.

h. The deficiencies of the hearsay Cushing affidavit were brought to the attention of the Court, but it failed to properly recognize the affidavit as only hearsay evidence and inadmissible within traditional court standards of evidence applicable to an "opposed" motion for summary judgment.

i. The act of accepting improper hearsay evidence from the petitioner as only source to the court was highly prejudicial to the rights of the respondent.

3. BECAUSE THE COURT ACCEPTED WIDESPREAD
HEARSAY AS EVIDENCE, AND DID SO OVER A BONA-
FIDE AFFIDAVIT OF THE RESPONDENT, A RENEWAL
MOTION IS WARRANTED.

a. During oral argument on the motion of the petitioner on July 9, 1976, respondent indicated he was prepared to go further

at that time, in the presentation of evidence. Respondent indicated his preparedness to then present testimony of witnesses to validate his affidavit.

b. The Court "refused" to hear any witnesses from the respondent.

c. It becomes apparent that additional evidence is available to negate petitioner's application for summary judgment.

4. TO ACCEPT A HEARSAY AFFIDAVIT AS JUSTIFICATION FOR A SUMMARY JUDGMENT IN THE FACE OF A PRESENTED BONA FIDE AFFIDAVIT OF THE RESPONDENT, WITHOUT AFFORDING A RENEWAL MOTION WOULD CONSTITUTE A VIOLATION OF RESPONDENT'S DUE PROCESS OF LAW UNDER THE FOURTEENTH AMENDMENT.

WHEREFORE, respondent James D. McMillen respectfully requests that the Court grant his motion for renewal argument at a date and time to be set by the court.

DATED:

Yours, etc.,

TO: LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Office & P.O. Address
The Capitol
Albany, New York
(George A. Cushing, Asst.
Atty. Gen., of Counsel)

JAMES D. MCMILLEN
Respondent Pro Se
Office & P.O. Address
309 Anderson Building
Lincoln, Nebraska 68508
(402) 474-1642

STATE OF NEBRASKA)
) ss:
COUNTY OF LANCASTER)

JAMES D. MCMILLEN, being duly sworn, deposes and says
that he is the respondent named in the within action; that he has read
the foregoing motion, and knows the contents thereof; and
that the same is true to his own knowledge, except as to those matters
therein stated to be alleged upon information and belief, and as to those
matters, he believes it to be true.

DATED:

JAMES D. MCMILLEN

Sworn to before me this _____
day of November, 1976.

Notary Public

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ALBANY

In the matter of the Application of the
PEOPLE OF THE STATE OF NEW YORK by
LOUIS J. LEFKOWITZ, Attorney General of
the State of New York,

Petitioner,

for an Order enjoining and restraining JAMES D.
MCMILLEN, THERAPEUTIC HYPNOSIS, INC., WILLIAM
VASCO, RONALD VASCO and VERA VASCO,
individually and as incorporators, officers
and directors of THERAPEUTIC HYPNOSIS, INC.;
NATIONAL INSTITUTE OF HYPNOSIS PRACTICES, INC.
and JAMES D. MCMILLEN, as incorporator,
officer and director of NATIONAL INSTITUTE OF
HYPNOSIS PRACTICES, INC.,

Respondents,

pursuant to Article 5, section 63, subdivision
12 of the Executive Law, from carrying on,
conducting and transacting business in a per-
sistently fraudulent and illegal manner;
directing restitution for all consumers who
have done and are doing business with respon-
dents; pursuant to Article XI, section 1101 (a)
(1) and (2), and Article I, section 109 (a)
of the Business Corporation Law, cancelling any
certificate of incorporation in the name of
Therapeutic Hypnosis, Inc. and National Institute
of Hypnosis Practices, Inc. and ordering disso-
lution of Therapeutic Hypnosis, Inc. and National
Institute of Hypnosis Practices, Inc.; and pursuant
to Article 130, section 6515 of the Education Law
for an Order enjoining and restraining commission
and continuance of unlawful acts complained of herein.

MEMORANDUM OF LAW

POINT 1

JUDGMENT OF THE SUPREME COURT OF ALBANY
COUNTY IS IN ERROR AND HIGHLY PREJUDICIAL
TO THE RESPONDENT.

a. Judgment as set forth in the Court's Order asserts that the affidavit of James D. McMillen was not timely filed.

b. The C.P.L.R. does not require that respondent attach affidavits to an "answer". The C.P.L.R. properly allows the respondent to file his affidavits attached to those papers in opposition to the motion.

c. It should be noted that in allotting respondent five days to "answer", the Appellate Division was not effecting or demanding a "deadline of evidence" within five days.

d. Respondent's affidavit was timely filed.

POINT 2

JUDGMENT OF THE SUPREME COURT OF ALBANY COUNTY IMPROPERLY APPLIED JUDICIAL PROCEDURES IN REVIEWING AFFIDAVITS PRESENTED TO THE COURT.

a. The Court permitted the Attorney General of the State of New York to present a case, solely through hearsay evidence.

b. In doing this, the Court went far beyond its exercise of discretion.

c. The Attorney General is not exempt from the requirement of meeting acceptable standards in his pleadings.

"The Attorney General is not exempted from the consequences of presenting a pleading which does not stand the test of judicial approval under well defined rules of legal procedure". People v American Sugar Refining Co. 148 NYS 160

— 46 —

d. In fact the Court accepted as sole evidence the statements of the Attorney General to support an action by the Attorney General.

e. There were no other affidavits submitted by the Attorney General, other than his own.

f. The affidavit of George A. Cushing automatically becomes hearsay and unacceptable.

"It is quite clear that a motion for summary judgment will not be granted if it must depend upon any proof that would be inadmissible at the trial under some exclusionary rule of evidence." Raybin v Raybin, 15 AD 2d 679, 224 NYS 2d 165 (2d Dept 1962)

g. In total the alleged evidence of the George A. Cushing affidavit would be inadmissible pursuant to the above.

h. The affidavit of James D. McMillen should have been accorded proper weight.

"As long as the affidavits submitted in behalf of the opposing party are direct and unevasive, any conflicts they present with proof put in by the movant, insofar as the issues they involve are material, will be resolved in favor of denying the motion." (Weiss v Garfield, 21 AD 2d 156, 249 NYS 2d 458 (3d Dept 1964))

"The Court will accept as true, on a summary judgment motion the opposing party's evidence and any evidence of the movant which favors the opposing party."
Weiss v Garfield

i. The Court contradicts itself in the wording of its order. On one hand it alleges the respondent's affidavit was "no more than general denials"; and on the other hand, the court theorizes a way in which the specific statements contradicting the Cushing affidavit could have occurred, e.g. "bold faced lies".

j. It is apparent that the Court did not judge the wording of the respondent's affidavit, but rather, sought to find theories of "possibility" or probability to destroy its credibility; such being contrary to proper procedures for the court.

POINT 3

A RENEWAL MOTION IS WARRANTED

a. On one hand the Court has denied challenges to the errors of the petitioner as only being "harmless" and yet, on the other hand has sought to manipulate the defeat of any presentation of evidence by the respondent.

b. The respondent's evidence should be both accepted and viewed pursuant to proper standards of evidence.

POINT 4

NOT TO GRANT RENEWAL ARGUMENT WOULD DENY
RESPONDENT HIS CONSTITUTIONAL RIGHTS TO
DUE PROCESS OF LAW.

a. Respondent is lawfully entitled to present his defense to petitioner's application.

b. Denying this opportunity deny's his due process of law.

"Convictions cannot be brought about by methods that offend a "sense of justice". (Justice Felix Frankfurter, Rochin v California, 342 U.S. 173)

"While it is for the state courts to determine the adjective as well as the substantive law of the State, they must, in so doing, accord the parties due process of law. *** a state may not deprive a person of all existing remedies for the enforcement of a right, which the State has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it." (Brinkerhoff Co. v Hill 281 U.S. 673).

"As applied to judicial proceedings, the due process clause simply means that a party shall have his "day in court". (State v Public Service Commission of Missouri 51)

CONCLUSION

RENEWAL ARGUMENT IS WARRANTED AND
SHOULD BE GRANTED.

STATE OF NEBRASKA)
) ss:
COUNTY OF LANCASTER)

JAMES D. MCMILLEN, being duly sworn, deposes and says that he is the respondent named in the within action; that he has read the foregoing memorandum of law and knows the contents thereof; and that the same is true to his own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters, he believes it to be true.

DATED:

JAMES D. MCMILLEN

Sworn to before me this _____
day of November 1976.

Notary Public

ADVERTISEMENT IN NEW YORK TIMES DATED
MARCH 5, 1975
(Defendant's Exhibit (A))

An Open Letter

The Attorney General Of The State Of New York,
The Hon. Louis J. Lefkowitz.

Therapeutic Hypnosis Inc.

700 Phillips Building
Schenectady, New York 12305
(518) 374-2000

TERN DIV.

PHDQRS.

Phillips Bldg.
ctady, N.Y. 12305
18-374-2000

NCH OFFICES

4 Press Bldg.
9 Chenango
mton, N.Y. 13902
07-722-3333

Genesee Bldg.
falo, N.Y. 14202
16-854-8850

Midland Bank Bldg.
Washington St.
hkeepsie, N.Y.
14-452-5063

Powers Bldg.
ester, N.Y. 14614
715-546-2424

10 Loew Bldg.
icuse, N.Y. 13202
315-422-8024

Phillips Bldg.
Suite 56
ectady, N.Y. 12305
518-374-2000

7 Hopper St.
Suite 5
tica, N.Y. 13501
315-732-6223

on Station Bldg.
Rm. 505
nsville, Pa. 15417
412-785-7000

08 Haney Bldg.
ennedy Square
w Castle, Pa 6103
412-458-5300

edical Arts Bldg.
30 N. 5th Street
ading, Pa. 19001
215-375-7817

22 Connell Bldg.
ashington Ave.
ramton, Pa. 15303
717-861-0708

68 Cabot Street
verly, Mass. 01915
617-822-2061

106 Main St.
ensock, N.J. 07601
201-487-2244

Dear Mr. Attorney General:

The contents of this letter represents the collected efforts of a staff of a corporation of which I am the Chairman of the Board. They are a group of fine young men who are sincere, honest and dedicated workers. Moreover, they are a staff of concerned, and aroused citizens who feel that the system of American Government is designed to strive for a sense of fair play and justice under the law and that somehow; within the definitions of American government, there are means of seeking equal treatment under the law and justice. More importantly, we are a staff of persons who have been raised under the idea and concept that the Office of the Attorney General is responsible for the pursuit of the law, its enforcement, fairly and equally; and a high sense of judicial ethics. Regretfully however we are a staff of persons who have been driven to a conclusion that the previous statements do not represent the administration of the Attorney Generals office of the state of New York, as it has dealt with this Corporation, and that your administration is guilty of violating the very fundamentals of the purpose of the Attorney General as a part of the government.

THI is a Corporation; organized under the laws of the State of New York. I might add that being so incorporated, its purpose & function was processed through your office. The purpose as stated is "to engage in the practice of hypnosis". Despite the State of New York's accepting both this stated purpose and the legal entity, it would appear as though your office and administration has been long been embarked upon a thorough program of harassment and extermination. Moreover, through means and devices which contradict the very purpose for the existence of the Attorney General.

As a Corporation we feel agrieved and damaged. The extent and amount of financial damage you have brought upon us is significant and immeasurable. However, the damage to the ideals of justice and

our dollar volumn of hypnosis done in the Buffalo office excuded \$14,000.00. The obvious question is "Did the 28.50 spent bring us the 14,000.00 of hypnosis?" Of course not. Rather it was success and personal referrals.

Now let me begin to characterize the history of the handicaps you have inflicted upon us as you implemented your power and authority during the past year.

1. Purposefully you have kept us in a suspended state of investigation for the entire history of our corporate life.

2. For fifteen months you have responded to every enquiry about us with the phrase, "They're under investigation by the Attorney General."

3. When asked "For What?" your office has declined and refused to say.

4. During the past summer, a major TV station in Rochester N.Y. inquired as to the nature of your inquiry and you refused to allege a charge. Moreover, your local Rochester office of the Atty. Gen. conceded to this TV station that in our year of operation they had not received one complaint about us. This entire matter was presented to the public in the City of Rochester, and I might add that this is still a highly successful functioning office.

5. During mid-summer your so-called "under investigation" statements caused several major TV stations and newspapers to withhold news stories about us in the states of Indiana and Illinois.

6. Your position significantly contributed to our having to close 2 offices in the state of Michigan as we could not overcome the innuendoes and inferences which result from your statements.

7. Because of this statement continually coming from your office, we have had radio and newspaper advertising cancelled. Moreover, we have been refused advertising in many cities solely on this basis.

8. In mid-summer, I personally called your assistant, Mr. Pantalone

Buffalo etc.

Below is a list of all the records you demanded:

"All bank records of Therapeutic Hypnosis, Inc.; to wit: passbooks, deposit slips and bank statements and checkbooks, checking records and/or stubs; all records pertaining to employees including payroll records and information relating to Federal and State withholding tax and Social Security payments for each and every employee employed by Therapeutic Hypnosis, Inc., during the period from January 1, 1973 through January 1, 1975; all records of the corporate assets of Therapeutic Hypnosis, Inc., including corporate books, ledgers and accounts and annual or semi-annual accountant's reports or balance statements; all appointment books for Therapeutic Hypnosis, Inc., branch offices located in Schenectady, Utica, Syracuse, Rochester, Buffalo, Binghamton and Poughkeepsie, New York, for the period from January 1, 1973 through January 1, 1975, which the Attorney General de-

It would have taken a pick-up truck to have transported them.

Additionally I informed your agents that we retain the accounting firm of Peat, Marwick, Mitchell & Co., and that some of the records were in the hands of our accountants.

I advised your agents that we would be happy to offer all our records but that it was impossible to do on an instantaneous basis. I said I felt the order was "unreasonable."

To this your agent shouted to me that I was not an attorney and therefore couldn't say that the subpoena was unreasonable. He shouted, "Are you, or are you not going to comply?" I replied that I would not comply. — It was obvious that I couldn't hand him records spread over 7 cities and in the offices of our accountants. Additionally, I was

106 Main St.
 Schenectady, N.Y. 12301
 301-477-2344

Security Bldg.
 1st - Main St.
 Louisville, Ind. 47706
 812-436-0449

son Bldg. - Suite 17
 63 E. Main St.
 Chicago, Ind. 47306
 317-288-2344

at'l. Office Bldg.
 Suite 616
 4 N. Water St.
 Chicago, Ill. 62522
 317-429-5232

Talcott Bldg.
 Rm. 615
 21 W. State St.
 Chicago, Ill. 61101
 815-862-5008

6 Chestnut St.
 Room 230
 St. Louis, Mo. 63101
 314-434-3136

**STERN DIV.
 RP. HDQRS.**
 n G. Vasko, Pres.
 Walnut Bldg.
 St. City, Mo. 64106
 16-221-1316

NCH OFFICES
 s Bldg. Suite 715
 9 West 9th St.
 Omaha, Kan. 68112
 112-232-6366

Nat'l. Bank Bldg.
 Suite 1219
 1 S. Broadway
 Omaha, Kan. 68119
 16-263-3382

Walnut Bldg.
 11 Walnut St.
 St. City, Mo. 64106
 16-221-1316

Corby Bldg.
 Suite 101
 18 & Felix St.
 St. Joseph, Mo. 64501
 16-232-7600

erson Bldg.
 Suite 803
 12th & O St.
 Omaha, Neb. 68106
 16-474-1642

at'l. Bank Bldg.
 Suite 620
 603 Farview
 Omaha, Neb. 68102
 02-345-1655

amount of financial damage you have brought upon us is significant and immeasurable. However, the damage to the ideals of justice and good government once held by our employees is even much more significant. Financial damage can be overcome and is repairable, and a corporate entity has no personal feelings. The staff and employees of a firm do have feelings and damaged American ideals are not as easily repaired. Permit me to briefly outline the story of THI both in the sense of its growth and development and also the story of the handicaps and hardships you have inflicted upon it over the 15 months we have been in your files.

The story of THI is one of unique growth based upon manifold truths. THI is a Corporation which offers a service of hypnosis in two specialties — cigarette addiction and appetite control/weight loss. When I say specialize I mean that we see persons only for these two reasons. We have iniquity successful in both of these specialty areas. — so successful that we have managed to grow thru public acceptance from one office in Schenectady N.Y. to a point of having 24 centers in 10 states. Last year, THI saw in excess of 30,000 persons in these two specialties. Each of these 30,000 persons were seen individually. In every case the same identical messages were given in hypnosis, as our messages are standardized and do not vary even a word from person to person or from city to city. This in itself is a tremendous accomplishment. Without question it can be said that never before in the annals and history of man has a single set of 3 messages in hypnosis been given without deviation 30,000 times. Never before in history has a single set of hypnosis messages been so thoroughly documented. 30,000 times documented.

Noteworthy is that our growth, both in centers and in persons seen did not come from massive advertising campaigns and tremendous expenditures to advertise our service. Rather it was principally accomplished by way of word of mouth and pure success. To illustrate this I mention that during August (a slow month in the City of Buffalo our total advertising amounted to 28.50 spent on one line in the personal column of the Courier Express. Yet,

have had radio and newspaper advertising cancelled. Moreover, we have been refused advertising in many cities solely on this basis.

8. In mid-summer, I personally called your assistant, Mr. Pantalone and pleaded with him for a conclusion to this so called investigation. I offered him any and all information — our records, brochures, tapes, testimony or any assistance he might want in making a determination. He refused only to tell me that he was very busy. I asked him when he felt he would complete his inquiry and he said he didn't know — he was busy but that he "had every legal right to continue to say that we were under investigation." And of course he did. — A total of 15 months now!

9. During the year we received a plaque given to us from Metropolitan Life Insurance Company. A picture of the presentation was taken and appeared in the Knickerbocker News. We received this plaque because of the type of group health insurance we carry with Met Life Ins. for our employees. I might mention that we have some 60 employees on a group comprehensive health insurance policy which we are told is the finest available. Our company pays 100% of the cost as an employee benefit.

Your agent, seeing the picture called our Metropolitan representative and asked him "Why is Metropolitan giving a plaque to THI?" When asked why he should inquire the traditional answer was given. "They're under investigation by the Atty. Gen."

Again asked "for what?" — your agent refused to say. However the inuendo was completed.

10. The final most significant act occurred on February 14th of this year. At 11:30 A.M., two of your agents appeared in our office with a subpoena issued under "executive law" demanding virtually every form of record a business can maintain. Moreover they wanted them immediately even to the point of wanting to take them with them. This subpoena demanded our appointment books for every city in the state of N.Y. — immediately. This was virtually impossible. There is no human way to give someone records which are in other cities instantly. Short of a miracle there is no human means of standing in Schenectady, N.Y. and giving away records in

other cities. "Are you, or are you not going to comply?" I replied that I would not comply. — It was obvious that I couldn't hand him records spread over 7 cities and in the offices of our accountants. Additionally, I was most amazed to learn from my employees that while waiting to see me and without authorization your agents went through files in our general office area. It would seem to me that a search warrant would have better covered their behavior than a subpoena to produce records.

The conclusion to the above is that not only are we now "under investigation" by your office, I suppose you also can say technically that we have refused to comply with a subpoena issued under your authority pursuant to executive law. Again a label which would be most damaging to us in the eyes of the public.

Mr. Lefkowitz, I have chosen to publish this open letter to protest 15 months, of behavior from your office which we can only label as grossly unfair, and truthfully only a course of harassment in an attempt to exterminate this corporation via questionable methods. We feel this is intolerable coming from an agency who is responsible for executing the law.

Your responsibility is to protect our rights under the law as well as everyone else's rights.

Our corporation is what is often referred to as a "closed shop" in union terms. Every employee of THI is a union member of Local 481, OPIEU-AF of L-CIO. Because the results of your actions of the last year impugn the integrity of every union member of THI, I have asked the officials of Local 481 to assist in the cause of bringing this matter to a fair conclusion. I am hoping that organized labor will support this appeal.

This advertisement is appearing in a national newspaper because I hope to accomplish two things.

1. To explain nationally our position to those agencies who relied upon your statements during the past 15 months in all of the states in which we operate.

2. To emphatically urge a better, fairer and more ethical use of executive power on the part of the Atty. Gen. of the State of N.Y.

Sincerely yours,
 James D. McMillen
 Chairman of the Board

PETITION - SUPREME COURT PROCEEDING
(Defendant's Exhibit (B))

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ALBANY

In the Matter of the Application of the
PEOPLE OF THE STATE OF NEW YORK by LOUIS J.
LEFKOWITZ, Attorney General of the State
of New York,

Petitioner,

for an Order enjoining and restraining
THERAPEUTIC HYPNOSIS, INC., JAMES D. McMILLEN,
WILLIAM VASCO, RONALD VASCO and VERA VASCO,
individually and as incorporators, officers
and directors of THERAPEUTIC HYPNOSIS, INC.;
NATIONAL INSTITUTE OF HYPNOSIS PRACTICES, INC.
and JAMES D. McMILLEN, as incorporator,
officer and director of NATIONAL INSTITUTE OF
HYPNOSIS PRACTICES, INC.,

NOTICE OF
PETITION

Respondents,

pursuant to Article 5, section 63, subdivision
12 of the Executive Law, from carrying on,
conducting and transacting business in a per-
sistently fraudulent and illegal manner;
directing restitution for all consumers who
have done and are doing business with respon-
dents; pursuant to Article XI, section 1101 (a)
(1) and (2), and Article I, section 109(a)(5)
of the Business Corporation Law, cancelling any
certificate of incorporation in the name of
Therapeutic Hypnosis, Inc. and National Institute
of Hypnosis Practices, Inc. and ordering disso-
lution of Therapeutic Hypnosis, Inc. and National
Institute of Hypnosis Practices, Inc.; and pursuant
to Article 130, section 6515 of the Education Law
for an Order enjoining and restraining commission
and continuance of unlawful acts complained of herein.

S I R S:

PLEASE TAKE NOTICE that upon the petition of the People of
the State of New York by Louis J. Lefkowitz, Attorney General of

the State of New York, verified the 5th day of Aug. 1975, an application will be made to this Court at Special Term, Part I thereof, to be held at the Albany County Courthouse in Albany, New York on the 12th day of Sept. 1975 at 9:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order and judgment granting the relief demanded in the petition.

DATED: August 5, 1975

Yours, etc.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Petitioner
The Capitol
Albany, New York 12224
(GEORGE A. CUSHING, Assistant
Attorney General, of Counsel)
Telephone: 474-6342

TO:

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ALBANY

In the Matter of the Application of the
PEOPLE OF THE STATE OF NEW YORK by
LOUIS J. LEFKOWITZ, Attorney General of
the State of New York,

Petitioner,

for an Order enjoining and restraining
THERAPEUTIC HYPNOSIS, INC., JAMES D.
MCMILLEN, WILLIAM VASCO, RONALD VASCO
and VERA VASCO, individually and as in-
corporators, officers and directors of
THERAPEUTIC HYPNOSIS, INC., NATIONAL
INSTITUTE OF HYPNOSIS PRACTICES, INC.
and JAMES D. MCMILLEN, as incorporator,
officer and director of NATIONAL INSTITUTE
OF HYPNOSIS PRACTICES, INC.,

PETITION

Respondents,

pursuant to Article 5, section 63, subdivision
12 of the Executive Law, from carrying on,
conducting and transacting business in a
persistently fraudulent and illegal manner;
directing restitution for all consumers who
have done and are doing business with respon-
dents; pursuant to Article XI, section 1101 (a)
(1) and (2), and Article I, section 109(a)(5)
of the Business Corporation Law, cancelling any
certificate of incorporation in the name of
Therapeutic Hypnosis, Inc. and National Institute
of Hypnosis Practices, Inc. and ordering disso-
lution of Therapeutic Hypnosis, Inc. and National
Institute of Hypnosis Practices, Inc.; and pursuant
to Article 130, section 6515 of the Education Law
for an Order enjoining and restraining commission
and continuance of unlawful acts complained of herein.

The State of New York, by its Attorney General, Louis J,
Lefkowitz, Attorney General of the State of New York, complain-
ing of the respondents, alleges upon information and belief:

AS AND FOR A FIRST CAUSE OF ACTION
AGAINST THE RESPONDENT THERAPEUTIC
HYPNOSIS, INC.

FIRST: That the corporate respondent Therapeutic Hypnosis, Inc. (hereinafter THI) is a domestic corporation, duly organized pursuant to the laws of the State of New York on October 26, 1973, and has places of business in the City and County of Schenectady, New York, located at 229 Proctor's Building, 432 State Street, and 700 Phillip's Building, 434 State Street. Other places of business maintained by the respondent THI in the State of New York are as follows:

1204 Press Building
19 Chenango
Binghamton, NY 13902

719 Genesee Building
Buffalo, NY 14202

Marine Midland Bank Bldg. 434 Powers Building
80 Washington Street Rochester, NY 14614
Poughkeepsie, NY 12601

410 Loew Building
Syracuse, NY 13202

7 Hopper Street, Suite 5
Utica, NY 13501.

SECOND: The respondents James D. McMillen, William Vasco, Ronald Vasco and Vera Vasco, are incorporators, officers, directors, stockholders and/or agents and employees of the respondent THI and either supervise, conduct or direct the operation of the corporate respondent THI.

THIRD: That the stated purpose of respondent THI is "To engage in the practice of hypnosis services * * *" A copy of respondent THI's Certificate of Incorporation is attached

hereto and made a part hereof as Exhibit 1.

FOURTH: That the corporate respondent THI caused to be placed in the Yellow Pages of the 1974 Albany-Rensselaer telephone directory at page 186, an advertisement which contained the following information:

"Therapeutic Hypnosis.
Lose weight. Stop smoking.
Rid nervous tension.
Suite 229
Proctor's Arcade
432 State Street
Schenectady
370-3053"

FIFTH: Respondent THI also caused at various times in various newspapers throughout the State of New York, advertisements to be placed which stated as follows:

"Stop smoking. Lose weight.
Therapeutic Hypnosis, Inc.
(Phone number to call)"

That large numbers of consumers in the State of New York responded to these advertisements in hopes of being able to quit smoking and in the hope of losing unwanted weight. Individuals who so responded were offered a brochure prepared by respondent James D. McMillen. A copy of said brochure is attached hereto and made a part hereof as Exhibit 2.

That in this brochure, representations are made that "Overall statistics indicate a success rate of 93%" in

eliminating cigarette smoking through hypnosis and that "Overall statistics indicate that 72% of persons coming to Therapeutic Hypnosis, Inc. are responsive to suggestions for weight loss." Furthermore, the affirmative representation is made in this brochure that hypnosis cannot cause any dangerous side effects.

SIXTH: That respondent THI has no such statistics nor has ever tabulated statistics which indicate that these representations were true nor is there any basis in fact for these representations.

SEVENTH: That the respondent James D. McMillen while an agent and employee of respondent THI, has held himself out in advertising brochures, newspaper advertisements, television, radio and newspaper interviews, public addresses and other forms of communication to be a doctor of psychology, a doctor of theology, a doctor of metaphysical science and a doctor of physics.

EIGHTH: That the respondent James D. McMillen while an agent and employee of respondent THI, has not and has never matriculated from any accredited college or university and been awarded either Bachelor's, Master's, Ph.D.'s or other doctorate degree of any kind.

NINTH: That such improper use of the title "Doctor", in connection with the business of corporate respondent THI was made only to mislead and create an impression in the minds

of consumers that the business is being conducted by or under the supervision of a medical doctor.

TENTH: That respondent THI, by way of newspaper advertisements, prepared brochures and in radio, television and newspaper interviews, represented in the State of New York that respondent THI was associated with or acting in conjunction with the National Arthritis Foundation, the National Institute of Health and the Metropolitan Life Insurance Company in research projects involving the treatment of arthritis with hypnosis.

ELEVENTH: That such representations were false, have no basis in fact and were only made by respondent THI with the intent to make the operations of the business of respondent THI seem more reputable, creditable and desirable to consumers of the State of New York.

TWELFTH: That respondent THI has verbally and by means of tape recordings made representations in the State of New York to the effect that its use of hypnosis in treating obesity and cigarette smoking has been approved by a licensed medical doctor in the employ of the respondent THI. There is not and has never been a New York licensed medical doctor in the employ of respondent THI nor has any such medical doctor approved, prepared or developed hypnotic treatments utilized by the respondents.

THIRTEENTH: That respondent THI has verbally and by prepared tape recordings represented in the State of New York that all hypnotherapists employed by respondent THI are required to have Bachelor's degrees in psychology and at various times and places, officers and agents of the respondent THI have held themselves out as possessing Bachelor's, Master's, and Doctorate degrees in various fields in order to create the impression that they possessed knowledge and training that they do not, in fact, possess. These representations were false and made with the intent to mislead consumers who may have had reservations about placing themselves in the hands of one who had no professional training in the area of medicine or psychology.

FOURTEENTH: That on or about April 30, 1974, the respondent THI did cause a domestic corporation to come into being with the corporate name of "National Institute of Hypnosis Practices, Inc." (hereinafter NIHPI) possessing all the powers of a business corporation. A copy of the Certificate of Incorporation of the National Institute of Hypnosis Practices, Inc. is attached hereto and made a part hereof as Exhibit 3.

FIFTEENTH: That the only real function of said National Institute of Hypnosis Practices, Inc. is to issue the employees of respondent THI a certificate to be prominently displayed in the business offices of respondent THI. Such use was and is

intended to create a false impression in the minds of consumers that employees of respondent THI possess professional or advanced training. A copy of one such certificate is attached hereto and made a part hereof as Exhibit 4.

SIXTEENTH: That said NIHPI has never had any organizational meeting, meeting of stockholders, election of officers, issued shares, conducted business or functioned in any manner except as outlined in paragraph FIFTEENTH.

SEVENTEENTH: That as a consequence of the above mentioned acts and practices, respondent THI was and is in violation of the meaning and intent of section 350 of the General Business Law.

EIGHTEENTH: That as a consequence of the above mentioned acts and practices, respondent THI was and is in violation of the meaning and intent of section 349 of the General Business Law.

NINETEENTH: That as a consequence of the acts, practices and conduct of the respondent THI as outlined above, the safety and welfare of the People of the State of New York has been aggrieved and endangered.

TWENTIETH: As a consequence the respondent THI was and is engaged in fraudulent and illegal practices and otherwise demonstrates fraud and illegality in the conduct of the operation of its business within the meaning and intent of Article 5, section 63(12) of the Executive Law; and Article XI, section 1101 (a) (2)

of the Business Corporation Law.

AS AND FOR A SECOND CAUSE OF
ACTION AGAINST THE RESPONDENT
NATIONAL INSTITUTE OF HYPNOSIS
PRACTICES, INC.

TWENTY-FIRST: Petitioner restates and realleges each and every allegation made hereinabove in paragraphs numbered FIRST through TWENTIETH, inclusive.

TWENTY-SECOND: That as a consequence of the acts, practices and conduct of the respondent NIHPI as outlined above, the safety and welfare of the People of the State of New York has been jeopardized, aggrieved and endangered.

That as a consequence respondent NIHPI was and is engaged in fraudulent and illegal acts and practices and has otherwise demonstrated fraud and illegality in the conduct of the operation of its business in the State of New York within the meaning and intent of Article 5, section 63(12) of the Executive Law; and Article XI, section 1101(a)(2) of the Business Corporation Law.

TWENTY-THIRD: Petitioner restates and realleges each and every allegation made hereinabove in paragraphs numbered FIRST through TWENTY-SECOND, inclusive.

TWENTY-FOURTH: That on various occasions, the respondent James D. McMillen, while an agent and employee of respondent THI,

rendered services to members of the public who were suffering from physical conditions other than obesity, requiring medical treatment which the respondent James D. McMillen attempted to treat by means of hypnosis, prescription and palpation.

TWENTY-FIFTH: That respondent THI holds itself out as being in the business of using hypnotherapy to treat the human physical condition of obesity.

TWENTY-SIXTH: That the aforementioned acts and practices of the respondent THI, its agents, employees and servants constitute the practice of the profession of medicine as it is defined in section 6521 of the Education Law of the State of New York.

TWENTY-SEVENTH: That none of respondent THI's employees and agents are persons duly licensed or otherwise authorized by the Education Law of the State of New York to practice medicine.

TWENTY-EIGHTH: Attached hereto and made a part hereof as Exhibit 5, is a certificate from the State Education Department indicating that respondent James D. McMillen is not a licensed physician in the State of New York.

TWENTY-NINTH: That said aforementioned acts and practices of respondents constitute a persistent violation of section 6522 of the Education Law of the State of New York which prohibits the practice of medicine by those other than a duly licensed or authorized physician.

THIRTIETH: That as a consequence of the acts, practices and conduct of the respondent THI outlined above, the safety and welfare of the People of the State of New York has been jeopardized, aggrieved and endangered. As a consequence, the respondent THI was and is engaged in fraudulent and illegal practices and otherwise demonstrates persistent fraud and illegality in the conduct of the operation of its business within the meaning and intent of Article 5, section 63(12) of the Executive Law and Article XI, section 1101(a)(2) of the Business Corporation Law of the State of New York.

AS AND FOR A THIRD CAUSE OF ACTION
AGAINST RESPONDENTS JAMES D. McMILLEN,
WILLIAM VASCO, RONALD VASCO and
VERA VASCO, INDIVIDUALLY

THIRTY-FIRST: Petitioner restates and realleges each and every allegation made hereinabove in paragraphs numbered FIRST through THIRTIETH, inclusive.

THIRTY-SECOND: That respondent James D. McMillen was and/or is an incorporator, officer, chairman of the board of directors, agent and employee of respondent THI, and that prior to the incorporation of respondent THI, was engaged in the "private practice of hypnosis" at 229 Proctor's Building, 432 State Street in Schenectady, New York; that respondents William Vasco, Ronald Vasco and Vera Vasco are incorporators, directors and stockholders, agents and employees of respondent THI.

THIRTY-THIRD: That respondents James D. McMillen, William Vasco, Ronald Vasco and Vera Vasco are actively engaged in the management, direction and control of the acts and practices of the corporate respondent THI including the acts and practices alleged herein.

THIRTY-FOURTH: That in order to protect the interests of the People of the State of New York and to render effective such Orders as the Court may issue, it is necessary that said incorporators, officers and directors, stockholders, agents and employees of the respondent THI be joined as individual respondents.

THIRTY-FIFTH: That the individual respondents as incorporators, officers and directors of the corporate respondent THI have engaged in conduct violative of the meaning and intent of Executive Law, Article 5, section 63(12), and Education Law, Article 131, section 6521 of the State of New York.

WHEREFORE, petitioner prays that a judgment be granted

- (a) pursuant to section 63(12) of the Executive Law permanently enjoining, restraining and prohibiting the corporate respondent THI and the individual respondents James D. McMillen, William

Vasco, Ronald Vasco and Vera Vasco
as incorporators, stockholders, officers
and directors, agents and employees of
the corporate respondent THI from
engaging in fraudulent and illegal
practices set forth herein;

(b) pursuant to section 6515 of the Education
Law permanently enjoining, restraining
and prohibiting the corporate respondent
THI, its agents, employees and servants,
and the individual respondents James D.
McMillen, William Vasco, Ronald Vasco
and Vera Vasco, from the practice of
medicine without being duly authorized
or licensed as herein specified;

(c) pursuant to section 63(12) of the
Executive Law providing for restitution
to all aggrieved persons named and
unnamed, known and unknown;

(d) pursuant to section 63(12) of the
Executive Law and Article XI, section
1101(a)(1) and (2) and Article I,

section 109(a) (5) of the Business Corporation Law cancelling any Certificate of Incorporation issued in the name of Therapeutic Hypnosis, Inc. and ordering dissolution of the corporate respondent THI;

- (e) pursuant to section 63(12) of the Executive Law and Article XI, section 1101(a) (1) and (2) and Article I, section 109(a) (5) of the Business Corporation Law cancelling any Certificate of Incorporation issued in the name of National Institute of Hypnosis Practices, Inc.;
- (f) pursuant to section 63(12) of the Executive Law enjoining, restraining and prohibiting each and every respondent herein from engaging in any further business in the State of New York until the terms of the Court's Order herein are fully complied with; and

(g) pursuant to section 8303(a)(6) of the Civil Practice Law and Rules, costs to the petitioner herein in the amount of TWO THOUSAND DOLLARS (\$2,000.00) against each and every respondent herein and for any other and further relief as the Court may deem just and proper in the circumstances.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Petitioner
Office and P. O. Address
The Capitol
Albany, New York 12224
(GEORGE A. CUSHING, ESQ.,
of Counsel)
Telephone: (518) 474-6342

to 9
A-171

DECISION OF JUSTICE STALEY
(Defendant's Exhibit (C))

AT a Special Term Part I of the
Supreme Court in and for the
County of Albany, State of
New York, at the Albany County
Courthouse in the City of
Albany on the 9th day of
July, 1976.

P R E S E N T:

HON. ELLIS J. STALEY, JR.,
Justice Presiding.

In the Matter of the Application of the PEOPLE
OF THE STATE OF NEW YORK by LOUIS J. LEFKOWITZ,
Attorney General of the State of New York,

Petitioner,

for an Order enjoining and restraining JAMES D.
MCMILLEN, THERAPEUTIC HYPNOSIS, INC., WILLIAM
VASCO, RONALD VASCO and VERA VASCO, individually
and as incorporators, officers and directors of
THERAPEUTIC HYPNOSIS, INC.; NATIONAL INSTITUTE
OF HYPNOSIS PRACTICES, INC. and JAMES D. MCMILLEN,
as incorporator, officer and director of NATIONAL
INSTITUTE OF HYPNOSIS PRACTICES, INC.,

JUDGMENT

Index No.
14290-75

Respondents,

pursuant to Article 5, section 63, subdivision 12
of the Executive Law, from carrying on, conducting
and transacting business in a persistently fraudulent
and illegal manner; directing restitution for all
consumers who have done and are doing business with
respondents; pursuant to Article XI, section 1101(a)
(1) and (2), and Article 1, section 109(a) of the
Business Corporation Law, cancelling any certificate
of incorporation in the name of Therapeutic Hypnosis,
Inc. and National Institute of Hypnosis Practices,
Inc. and order dissolution of Therapeutic Hypnosis,
Inc. and National Institute of Hypnosis Practices, Inc.
and pursuant to Article 130, section 6515 of the Educa-
tion Law for an Order enjoining and restraining commis-
sion and continuance of unlawful acts complained of herein.

Petitioner herein, having brought this proceeding for a judgment pursuant to Article 5, section 63, subdivision 12 of the Executive Law, permanently enjoining and restraining corporate and individual respondents from conducting and transacting their business in a persistently fraudulent and illegal manner and for other and further relief as this Court may deem just and proper under the circumstances.

NOW upon reading and filing the petition of the People of the State of New York by their attorney, Louis J. Lefkowitz (George A. Cushing, of Counsel), duly verified the 5th day of August, 1975; the affidavit of George A. Cushing, Assistant Attorney General, sworn to on the 5th day of August, 1975, together with exhibits attached to the petition herein in support thereof and upon reading and filing the answer of the individual respondent James D. McMillen, verified on the 4th day of June, 1976; the answer of Therapeutic Hypnosis, Inc. and National Institute of Hypnosis Practices, Inc. by their attorney J. Raymond Fisher, Esq., verified on the 18th day of June, 1976, and this matter having come on to be heard at a Special Term of this Court at Part I thereof, held in and for the Third Judicial District at the County Courthouse in Albany, New York on the 9th day of July, 1976, and after hearing Louis J.

Lefkowitz, Attorney General of the State of New York (George A. Cushing, of Counsel) in support thereof; James D. McMillen, Pro Se, and J. Raymond Fisher, Esq., attorney for corporate respondents in opposition thereto, and there being no appearance or answer on the part of the other named respondents, they not having appealed the prior decision and judgment of this Court entered on November 5, 1975 in the Albany County Clerk's office and which remains binding upon them, and upon the decision of this Court which is attached hereto and made a part hereof,

NOW, upon motion of Louis J. Lefkowitz, Attorney General of the State of New York, attorney for petitioner, the Court having summarily disposed of this proceeding pursuant to CPLR 409(b), it is,

ORDERED, ADJUDGED AND DECREED that any certificate filed pursuant to section 403 of the Business Corporation Law creating Therapeutic Hypnosis, Inc. is hereby cancelled and that Therapeutic Hypnosis, Inc. is hereby dissolved, and it is further

ORDERED, ADJUDGED AND DECREED that the respondents, individually and corporatively, as well as all incorporators, stockholders, officers, directors, agents and employees of the corporate respondents, their successors and assigns, are hereby permanently enjoined and restrained from engaging in any of the following conduct:

- (a) falsely holding themselves out by any manner or means as possessing any professional or educational qualifications,

degrees or certificates that they do not possess;

(b) utilizing hypnosis or hypnotherapy for the purpose of diagnosing, treating, operating or prescribing for any human disease, pain, injury or physical condition unless qualified to practice medicine pursuant to section 6524 of the Education Law of the State of New York;

(c) falsely representing to members of the public by any method or means that they are professionally qualified or otherwise capable of using hypnosis and that such qualification or capabilities enable them to achieve a high percentage of success curing people of the habits of cigarette smoking and overeating; and

(d) holding themselves out to be authorized and degreed practitioners of implied medical art, to wit: hypnotherapy,

and it is further

ORDERED, ADJUDGED AND DECREED that the petitioner herein recover from each of the respondents James D. McMillen, Therapeutic Hypnosis, Inc. and National Institute of Hypnosis Practices, Inc., the sum of TWO THOUSAND DOLLARS (\$2,000.00) as costs allowable pursuant to section 8303(a)(6) of the CPLR, and it is further

ORDERED, ADJUDGED AND DECREED that the individual and corporate respondents shall jointly and severally be liable to provide the Attorney General of the State of New York with the sum of FIVE HUNDRED DOLLARS (\$500.00) for the purpose of reimbursing all persons aggrieved by their fraudulent and illegal acts and practices resulting from the conduct of their business in this State, said sum to be held by the Attorney General and distributed for the stated purpose for a term of 180 days after which any remaining balance shall be refunded to respondents, and it is further

ORDERED, ADJUDGED AND DECREED that each and every individual and corporate respondent be enjoined, restrained and prohibited

from engaging in any further business of any type as principals,
majority stockholders, directors or general partners in the
State of New York until the terms of this order are fully
complied with.

DATED: November 21, 1976
Albany, New York

E N T E R:

s/Ellis J. Staley, Jr.
J. S. C.

I, J. J. [Signature], AN
ATTORNEY AT LAW, DO HEREBY CERTIFY, PURSUANT
TO THE NEW YORK ORDER, THAT I HAVE COMPARED
THE FOLLOWING WITH THE ORIGINAL AND HAVE
FOUND IT TO BE A TRUE AND COMPLETE COPY.
DATED: 11/23/76

NEWSPAPER ARTICLE OF AUGUST 14, 1975
Defendant's Exhibit (D)

State court action against Therapeutic Hypnosis begins

By DONNA HALVORSON

Atty. Gen. Louis L. Verderose has begun court action against Therapeutic Hypnosis Inc., until recently based in Schenectady, which he said has made false claims about its ability to help people stop smoking or lose weight through hypnosis.

In a petition filed in Supreme Court in Albany County, the attorney general also alleged that the corporation and its principals were practicing medicine without a license. He is seeking a judgment barring them from doing business in the state and an order dissolving the corporation.

Today's Regional News

TIMES-UNION***R Thursday, August 14, 1975 4

The corporation has offices in Poughkeepsie, Syracuse, Binghamton, Buffalo, Rochester and Utica, as well as offices in nine other states.

George A. Cushing, assistant attorney general in the Bureau of Consumer Frauds who is handling the case, said the

He said McMillen rented a 24-room house in Altamont for \$700 monthly and went to work in a chauffeured limousine.

The assistant attorney general estimated the gross income of the corporation from its beginnings in October of 1973 has been about \$1.5 million. It claimed to have served between 15,000 and 30,000 persons, "depending on which of their advertisements you read," he said.

The state is also seeking dissolution of the National Institute of Hypnosis and Therapeutic Practices Inc., ostensibly a training facility, established by McMillen and

corporation moved its headquarters from 434 State St., Schenectady, to "somewhere in Ontario" after the Internal Revenue Service filed a tax lien against the corporation for failing to deposit withholding taxes for its employees.

The Schenectady County Clerk's office confirmed operating out of the 434 State St. offices.

Where is McMillen? "That's the \$64,000 question," said Louis Verderose, owner of "Hypnosis Services", which now operates in McMillen's former offices. Its billing is "Lose Weight/Stop Smoking."

"The last time I've heard from him was April 17, which was the day the Internal Revenue Service came in to talk to us," Verderose said. "He was in St. Louis then. I haven't heard from him since."

A former employee of McMillen, Verderose said he is one of the persons who has filed a

Wednesday that a federal tax lien for \$123,425 was filed there on April 10 and a spokesman for the IRS in Albany said liens have been filed "every place the organization has raised its head."

The State Labor Department said Wednesday it is also investigating the organization on the basis of wage claims made by former employees.

Named as principals in the court case, to be heard at the Sept. 12 special term, are James D. McMillen, Vera Vasko, reportedly his sister, and her sons William and Ronald Vasko. Cushing said William Vasko now lives in Kan-

sas City, Mo., while the last known address for the other three was 7 Leesome Lane, Altamont.

McMillen, who in March took out a \$6,000 New York Times ad to charge Lefkowitz with harassment, not long thereafter told a local reporter that hypnotists are undergoing "the same sort of persecution" as chiropractors and acupuncturists.

He said his staff calls him "Doctor" but the title is merely honorary. The phone book, however, lists him as "Dr." McMillen. Cushing said McMillen's education culminated in a high school diploma.

Cushing said the court action has significance beyond the individuals involved because it represents the first litigation on the issue of whether the use of hypnosis to treat a physical condition — i.e., obesity — constitutes the practice of medicine.

Dr. Morton Berger, executive secretary to the state Board for Psychology, said there is no state law governing hypnosis though there have been proposals to regulate it by amending the State Education Law to define and limit the practice of psychology.

78

BROCHURE OF THERAPEUTIC HYPNOSIS INC.
(Defendant's Exhibit (E) - introduced for
identification only - not admitted)

HYPNO

ST

TOWA

MA

MAST

O

HIMS

ST S !
E P
R D S
N S
E R Y
F
E L F.

If you are currently thinking about hypnosis as a means by which you can better restructure your life, you are to be congratulated. It is a dynamic and effective way of unleashing man's own skills and abilities for a better and more meaningful life. Because you are reading this brochure, chances are that you are considering a visit to one of our centers of Therapeutic Hypnosis Inc. We feel you might like to know something about us, thus, we invite you to read this information before your visit.

Therapeutic Hypnosis Inc.



We believe we are specialists! Therapeutic Hypnosis Inc. has six centers in two states. In each of these offices, we specialize in two problems - cigarette addiction and the problem of weight control. Our technicians are each specially trained in the employment of hypnosis as a tool to combat these problems. In the past year, over 6,500 persons visited centers of Therapeutic Hypnosis Inc. This indicates the tremendous movement of many Americans towards a dynamic development of their own talents and abilities - learning to use their own strengths to overcome problems.

I sincerely hope that your visit to our office will be both enjoyable and personally profitable. On the reverse side of this paper are a few of the questions you might be interested in reviewing. When you arrive at our office, you will be given a full briefing as to what you will be experiencing and considerable time will be afforded you to ask any questions you might have. Among other things, we do sincerely hope that you will gain a full understanding of hypnosis and how it will be used for your benefit.

Again, congratulations on your decision. I hope that you will be entirely successful in accomplishing your goal.

Sincerely yours,

James D. Allen
Dr. James D. Allen, MSD
President, TH.

THERAPEUTIC HYPNOSIS INC.

Corporate Offices

Suite 229 Proctor's Bldg.,
Schenectady, N.Y. 12305
Ph. 518-370-3053

BRANCH OFFICES:

NEW YORK:

618 Genesee Bldg.,
Buffalo, N.Y. 14202
Ph. 716-854-0950

434 Powers Bldg.,
Rochester, N.Y. 14614
Ph. 716-546-2426

410 Loew Bldg.,
Syracuse, N.Y. 13202
Ph. 315-422-6024

Suite 5
7 Hopper St.,
Utica, N.Y. 13501
Ph. 315-732-6223

PENNSYLVANIA:

Suite 209, 1312 Bldg.,
1312 Chestnut St.,
Philadelphia, Penna.
Ph. 215-569-8888

WILL I HAVE THE OPPORTUNITY TO ASK QUESTIONS ABOUT THE EXPERIENCE PRIOR TO THE ACTUAL HYPNOSIS?

Yes, in fact, you will be given a full education about hypnosis, what you can anticipate, and will be given every opportunity to ask any questions you have. We sincerely hope that every person enters the experience with a full understanding of the experience.

OVERALL, HOW SUCCESSFUL HAS HYPNOSIS BEEN FOR COMBATTING CIGARETTE ADDICTION AND THE PROBLEM OF WEIGHT CONTROL AND LOSING WEIGHT?

Cigarettes.... Overall statistics indicate a success rate of 93%. Roughly this is to say that nine of every ten are responsive and one of every ten is not. Principally it is dependent upon the individual person wanting to stop smoking. Nothing will be done or suggested to you that "you will have to stop smoking." Rather, we will suggest that you will not crave, desire or want the cigarette, and that you will experience no withdrawal in not smoking. Hence, it becomes a very easy way to stop smoking.

Weight loss.. Overall statistics indicate that 72% of persons coming to Therapeutic Hypnosis Inc., are responsive to suggestions for weight loss. This is to say roughly that three of every four persons will be responsive, one will not. Nothing will be suggested to you in terms of the physiological function of your body. Nothing will be changed in terms of your body's processing of food. Rather, we will enable you to function with a basic desire to eat less. In fact, we will suggest that you will be happier eating less.

ARE RESULTS GUARANTEED?

Regretfully, NO. There is no way whereby any person could ever guarantee how an individual will respond to suggestion. This is principally due to the fact that your own desire to complete the suggestion is the main determinant in its success. The above statistics indicate that a certain percentage of persons will fail in either category of our specialty. We can only hope that you are in the group whose desire to accomplish will make it is success.

ARE THERE ANY DANGEROUS SIDE AFFECTS?

No. The type of hypnosis which will be induced and the type of suggestions which will be given to you cannot cause any dangerous side affects. This will be more fully explained to you in the educations you will receive in the office.

CAN EVERYONE ACHIEVE A STATE OF HYPNOSIS?

Almost everyone who is of the desire to be hypnotized can achieve some depth level in hypnosis. There are exceptions, but these are few. For the most part, everyone who is sincere in their endeavor can and will achieve sufficient depth in hypnosis to accomplish the suggestions which will be given them.

WILL I BE AWAKE AND REMEMBER MY EXPERIENCE?

You will be experiencing what is referred to as "waking hypnosis". As such, you will be fully conscious at all times and will remember everything which is said to you.

IF I'M NERVOUS, COULD SOMEONE ELSE BE WITH ME?

Probably everyone is a little nervous if they've never experienced hypnosis before. While we do not encourage this practice, it is allowed if you feel it is vital to your own ability to relax and participate in the endeavor.

LETTER OF EDUCATION DEPARTMENT DATED OCT. 2, 1975
Defendant's Exhibit (F)

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
99 WASHINGTON AVENUE
ALBANY, NEW YORK 12230

OFFICE OF THE
COORDINATOR OF ACADEMIC PROGRAMS

DIRECTOR
DIVISION OF ACADEMIC PROGRAM REVIEW
518: 474-3871

October 2, 1975

Mr. John Neuberger
Senior Investigator
Attorney General's Office
Albany, New York

Dear Mr. Neuberger:

I am responding to your inquiry regarding the University of Eastern Florida, that formerly operated in Tampa, Florida. This institution was never recognized by the U.S. Office of Education. The State of Florida restrained it from operating in that state. You will find this institution described on pages 126-127 in Degrees For Sale, by Lee Porter, Arco Publishing Company, New York City, 1972. I am enclosing a letter from the attorneys for this organization that frankly acknowledges that it was not a legitimate institution of higher education.

If I can provide you with further documentation, please feel free to call on me.

Sincerely,

Edward F. Carr

Edward F. Carr
Director

EFC:bs
Enclosure



Lancaster and Strelser
ATTORNEYS AT LAW

COMMERCE BUILDING, 1212 FLORIDA AVE.
TELEPHONE 229-8071
TAMPA, FLORIDA

WILLIAM S. LANCASTER
MARTIN N. STRELSE

RECEIVED

JAN 3 1972

State Board of Independent
Colleges and Universities

December 30, 1971

State Board of Independent Colleges & Universities
Department of Education
Tallahassee, Florida 32304

Re: University of Eastern Florida, Inc.
No. 3-64250 Charter
Compliance with Florida Chapter
71-128, General Laws of Florida
regarding State Board of Independent
Colleges and Universities

Gentlemen:

This firm represents the University of Eastern Florida, Inc. for various corporation matters. The President, C. Ellis, has contacted this firm regarding the licensing requirements effective January 1, 1972 regarding Chapter 71-128, General Laws of Florida.

It is the position of my client, which I believe to be proper, that the University of Eastern Florida, Inc., although its title contain the word "university", was not incorporated for the purpose of acting as a standard type of university in the sense of granting academic degrees, etc. or of furnishing classroom instruction of any type. This may readily be seen from the Amendment to the Corporation Charter which was filed with the Office of the Secretary of State September 13, 1971, a photostatic copy of which is attached hereto to this letter and by reference thereto made a part of the position which we hereby take.

To further show the intent, operation and general business being conducted by the University of Eastern Florida, Inc., we hereby enclose a photostatic copy of the University's letterhead showing exact copies of any and all advertisements previously placed with all publications. It may readily be seen from these advertisements that there has been in no way any attempt to designate the University of Eastern Florida, Inc. as an academic university. No misrepresentation has been made in any of these ads. The great advantage to obtaining one of these degrees is that it can be purchased through the University at a much lower price than it could be obtained

Page Two.

State Board of Independent Colleges & Universities
December 30, 1971

through a printer who would have to set individual plates to have one printed up for each customer.

In essence the University of Eastern Florida, Inc. was initially developed to operate and has continuously and repeatedly operated as a furnisher of a novelty item to the public with full disclosure being made to all parties concerned that the certificates carry no academic nor educational value in any way. ✓

The prospective purchaser of any degree has a money-back guarantee which has been honored completely with full satisfaction and no complaints to date voiced by any purchaser. In addition and for the primary purpose of insuring that no improper use would be made of any certificate given, the purchaser is required to sign a pledge not to use the certificate for any fraudulent purpose and not to use the certificate for the obtaining of any employment.

In addition on each and every certificate is stamped "This certificate does not represent an earned degree". A blank piece of letterhead paper with this stamp is hereby enclosed for your information.

Under these circumstances, and taking into consideration all safeguards concerned, it is the firm opinion of this firm that, not only have all legal safeguards possible been taken by my client in the transactions regarding these certificates but, in addition, my client has gone far above and beyond any moral or ethical obligation which could be imagined. In addition to restricting any phase of operation which could possibly be construed as being misleading on its part, the University also has taken every reasonable and sane precaution to prohibit any other person who might obtain these certificates from using the certificates in any manner which would cause any other person to be misled in any way.

Because of the above complete information as to the operation of the above corporation, it is my client's position that the above corporation has, from the beginning, operated strictly as a novelty, non-academic and strict legally and morally proper furnisher of these certificates completely divorced and apart from any inference as to the furnishing of these certificates for academic or financial status, gain or remuneration. This corporation has acted and conducted itself in all respects in a manner similar to that of an incorporated concession at a fair, carnival or an amusement park in distributing a novelty item which is completely harmless.

Just as we may say that the city sale of water is completely innocent, we cannot blame the supplier of water because someone is

Page Three.
State Board of Independent Colleges & Universities
December 30, 1971

drowned in that water. There has been and remains a market for this type of novelty item and there will always be a market for either this or some variation of the novelty item furnished by client. There is no doubt that the Honorable Members of the State Board of Independent Colleges & Universities as well as the authorities in the Office of the Secretary of State are well aware of the fact that a similar item with no safeguards whatsoever may readily be obtained through any one of a myriad of printers who will print you anything from FBI Identification cards to Chicken Inspector badges with no questions asked.

Since my client has operated in the manner described above for quite a number of months and has maintained the business with no complaints unresolved to its knowledge as of this date, it is the firm opinion of the President of this corporation and this writer that a property right has been acquired in the ownership and use of this business since its operation is not contrary to any known legal or moral rule and that, if the Honorable State Board of Independent Colleges & Universities should decide that the University of Eastern Florida, Inc. should not be allowed to continue in its operation, that this would constitute a deprivation of due process under the United States Constitution, the 5th and 14th Amendments, and also contrary to the constitutional rights granted by the State of Florida Constitution as regulated under the 14th Amendment.

My client welcomes any inquiry from this Honorable Board, from the Secretary of State of the State of Florida or from any other legitimate agency of the Federal, State or any of their subdivisions. After examining the matter I feel sure that this Honorable Board will agree with my client that this particular type of corporation should not be subject to regulatory control by the State Board of Independent Colleges & Universities and that this corporation has conducted itself in every respect in an exemplary manner.

Respectfully yours,

LANCASTER AND STRELSE

William S. Lancaster
WILLIAM S. LANCASTER

WSL:pcw
cc: Office of the Secretary of State

86

A M E N D M E N T

We the undersigned, being all the incorporators named in the certificate of Incorporation of University of Eastern Florida, Inc. the Charter NO. being 3-64250 and all the subscribers to the Capital Stock thereof, do agree to amend the by laws of the University of Eastern Florida, Inc. as follows

The University of Eastern Florida, Inc. shall not establish, maintain or conduct a University for the promotion and advancement of education and higher learning of any kind or in any field.

No credits, courses or examinations shall be given by the University for any reason, nor shall the University ever be known as an institution of higher learning, or of a school of any kind as stated in Article 2. of this corporation.

The undersigned, being all the incorporators named in the certificate of incorporation have conducted business under the terms of this amendment from the date of incorporation and have agreed to this amendment.

The same were taken up, read and considered, clause by clause, and adopted as the by laws of the Corporation, C motion duly made and carried, the Secretary was directed to amend the said By Laws in the minutes book. There being no further business before the meeting, the same was on motion, duly adjourned.

Dated, the 11th, day of June, 1970

C. E. Ellis
Secretary of Meeting

J. B. Ellis
Chairman of Meeting

J. B. Ellis
President

Secretary

C. E. Ellis

RECORDED

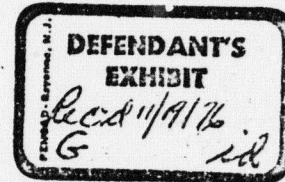
JAN 5 1972

Corporate Seal

FILED

MEMORANDUM FROM GEORGE CUSHING TO LOUIS
LEFKOWITZ DATED MARCH 4, 1975
(Defendant's Exhibit (G))

MEMORANDUM



TO: HON. LOUIS J. LEFKOWITZ
Attorney General

FROM: GEORGE A. CUSHING
Assistant Attorney General

RE: Matter of Investigation of Therapeutic
Hypnosis, Inc. and James D. MacMillan

For the last year and a half, this office has been investigating the above mentioned subjects in regard to their business activities within the State of New York. The subject James D. MacMillan, has been conducting business involving the use of hypnosis ostensibly to control smoking and obesity. In early 1974, he was subpoenaed to appear at this office by Assistant Attorney General Robert J. McKenna in regard to MacMillan's use of the title "doctor" which apparently he acquired from a diploma mill in Florida. No further action was taken by this office at that time.

Subsequent to his appearance here, MacMillan incorporated his business under the name of Therapeutic Hypnosis, Inc. and named himself as chairman of the board. He also has established a school for hypnotherapists which has been chartered by the New York Board of Regents and operates another institution known as the National Institute of Pain for which no records exist, either at the county or state level.

Therapeutic Hypnosis, Inc. and/or James D. MacMillan have been the subject of legal actions by the Attorney Generals in the States of Michigan and Ohio. During this period our investigation of the business practices of MacMillan and Therapeutic Hypnosis, Inc. have continued.

Recently we have established contact with several disgruntled former employees of Therapeutic Hypnosis, Inc. and they have provided us with information of continuing fraudulent and illegal activities on the part of MacMillan and Therapeutic Hypnosis, Inc. specifically regarding representations made by this concern in its business and failure by this business to comply with federal

Memorandum to Hon. Louis J. LeFkowitz
Page 2

and state tax and labor laws.

On February 14, 1975, I issued subpoenas duces tecum addressed to James D. MacMillan and/or Stephen Martin, as officers and agents of Therapeutic Hypnosis, Inc., returnable forthwith for the production of all corporate books and records, checkbooks and payroll information. The subpoenaed parties refused to comply with the subpoena alleging that the records in question were in the possession of their accountants, the firm of Post, Marwick & Mitchell. Therefore, a subpoena was issued against the accounting firm for these materials and the first subpoena against MacMillan et al was withdrawn. Currently, the subpoena against the accounting firm is adjourned until March 14, 1975 in order to permit them to post the books of this corporation, it being the feeling of this writer that once the very disorganized business records of the corporation are posted, they will be more understandable to us.

Your writer has been in contact with enforcement officials of the Internal Revenue Service, the State Department of Tax and Finance, and the State Department of Labor as well as the State Education Department in regard to activities of James D. MacMillan and Therapeutic Hypnosis, Inc. Affidavits indicating that MacMillan may have violated the Education Law and the Penal Law by practicing medicine without a license have been referred to the State Education Department. Permission has been received from other agencies mentioned for this office to conduct a broad-based investigation of the activities of Therapeutic Hypnosis, Inc. which apparently violate statutes which these agencies are charged to enforce. At this point, our investigation indicates that there is a strong possibility that both criminal and civil prosecutions against Therapeutic Hypnosis, Inc. and James D. MacMillan will be necessary.

The reason for my bringing this matter to your attention at this time is that I have been informed by an anonymous phone caller who is apparently in the employ of Therapeutic Hypnosis, Inc., that a letter will be printed in the March 5, 1975 issue of the New York Times accusing our office of unduly harrassing James D. MacMillan and Therapeutic Hypnosis, Inc. The information set out

Memorandum to Hon. Louis J. Leftowitz
Page 3

in this memorandum will hopefully prepare you to respond to any inquiries that may result from the publication of this letter.

Dated: March 4, 1975

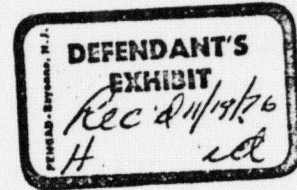
GEORGE A. CUSHING

cc: Mrs. Toch
Mrs. Bocco

GAC/mb

MEMORANDUM OF GEORGE CUSHING TO THE
FILES, DATED MARCH 20, 1975
(Defendant's Exhibit (H))

M E M O R A N D U M



TO: THERAPEUTIC HYPNOSIS, INC. FILE

FROM: GOERGE A. CUSHING
Assistant Attorney General

RE: TELEPHONE CALL FROM XTHI ON MARCH 20, 1975

On March 20, 1975, XTHI, who is no longer in the employ of Therapeutic Hypnosis, Inc., called with further information regarding the business conduct of this corporation and its principal, James D. McMillen. He informed me that one Mrs. Mary Lindsten, the wife of the chief of police of Decatur, Illinois, was in possession of two bad paychecks which had been presented her in payment of wages. The account number on the first check is 0213 0033 101 114 292 00000 5 18347 and was drawn on the Merchants National Bank and Trust Company of Syracuse, New York. The informant believes that as of March 11, 1975, this bank has no longer been accepting checks drawn on this account due to insufficient funds in the account. The account number on the second check is 0433 0383 2179349 0163 000 000 9193 drawn on the Galatin National Bank of Brownsville, Pa.

Mrs. Lindsten is represented by a private attorney in regard to the nonpayment of wages. His name is James Fuson whose post office and office address is 104 North Water Street, 7th Floor, Decatur, Illinois 62523. Our informant, whose first name is apparently Tom, also is located in Decatur, Illinois. This is the first indication we have had as to his identity and his current location.

Tom also informed me that on or about August 25, 1974, a by-line article appeared in the "Decatur Herald and Review" telephone number AC 217, 429-5151. This newspaper article concerned James D. McMillen and Therapeutic Hypnosis, Inc.'s operations in the Decatur area and was written by Lois B. Moore, a reporter on this newspaper. The article, published prior to the opening of the local office of Therapeutic Hypnosis, Inc., and apparently the information contained in the article was obtained from McMillen or one of his aides. In the article it was stated that McMillen had a Doctorate of Psychology degree and had been, prior to his involvement with Therapeutic Hypnosis, Inc., involved in the use of hypnotherapy in the treatment of drug abuse. The article went on to represent that all therapists had

Memorandum to Therapeutic Hypnosis, Inc. File
Page 2

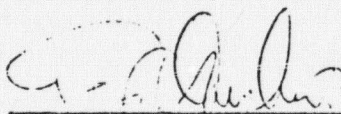
Bachelor's degrees in psychology and had at least two years' experience in the field of hypnotherapy.

Tom promised to send me a tape of James D. McMillen's voice which is being sold in various Therapeutic Hypnosis offices for \$20.00. He stated that on this tape McMillen calls himself "doctor." He further informed me that the Decatur office will be closed on April 1, 1975 due to the fact that the landlord has served a notice of eviction on the receptionist and thereapist (who now manages the office). Furthermore, due to an outstanding unpaid telephone bill, telephone service has currently been shut off at this office.

Tom further related that WCIA, which is a TV station located in the Champaign-Urbana, Illinois area, had an interview program on or about August 20, 1974, which featured James D. McMillen and Tom believes that various representations as to McMillen's background in psychology were made at this time. The moderator of the show was one Paul David.

Due to the valuable nature of the information that we continued to receive from this informant, I have authorized him in the future to call me person-to-person and reverse the charges. Until further notice appears in this file, this authorization will stand.

Dated: March 21, 1975



GEORGE A. CUSHING

MEMORANDUM OF FRANK PANTALONE TO STAFF
DATED AUGUST 8, 1974
(Defendant's Exhibit (I))

M E M O R A N D U M

TO: ALL BUREAU PERSONNEL
Bureau of Consumer Frauds and Protection

I am reissuing the attached memorandum for your information. I would like to reiterate the rule against disclosures contained in that memorandum in view of pending litigation against the New York Office of Consumer Interests, which company claims in affidavits to the Court that it contacts the Attorney General's office to obtain information relating to complaints against businessmen.

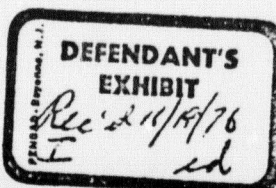
There may be attempts on the part of this company, or its agents, to entrap staff members into disclosing information relating to the existence or number of complaints against particular companies.

The rule is that this office does not disclose information concerning the existence or number of complaints against business concerns. The only information which is permitted to be disclosed is: (1) The existence of pending litigation or (2) the existence of an assurance of discontinuance or permanent injunction against any particular company, which information is a matter of record either through Court papers on file or through press releases issued by the Attorney General.

Dated: November 8, 1974

FRANK S. PANTALONE

46



MEMORANDUM

TO: BUREAU PERSONNEL

RE: Disclosure of Contents of Records or Files
Relating to Complaints to Consumers

Effective immediately, no information is to be divulged from our records or files of complaints to any individual who may inquire concerning the legitimacy of any particular business.

These records are deemed to be confidential and in the absence of any official legal action taken by this office which has been ultimately determined by injunction or otherwise, no information should be disclosed.

The only exception is when the Attorney General himself authorizes the issuance of a Press Release warning the public about the activities of any particular company. In such instance, the contents of such Press Release may be called to the attention of the public.

The admonition against disclosures relates not only to disclosure of the contents of our files but also you may not advise the person inquiring that we do, in fact, have any complaints against any particular business.

Dated: June 26, 1970

FRANK S. PANTALONE

COPY - NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

U. S. DISTRICT COURT
N. D. OF N. Y.
FILED
DEC 20 1976

JAMES D. MCMILLEN

Plaintiff,

vs.

LOUIS J. LEFKOWITZ, individually,
and as the ATTORNEY GENERAL OF
THE STATE OF NEW YORK, and THE
STATE OF NEW YORK,

Defendant.

AT _____ O'CLOCK _____ M.
J. R. SCULLY, Clerk
UTICA

NOTICE OF APPEAL

CIV. NO. 75-CV-427

Notice is hereby given that JAMES D. MCMILLEN, plaintiff
above named, hereby appeals to the U.S. Court of Appeals for
the Second Circuit from the final judgment from a directed
verdict, entered in this action on the 19th day of November,
1976.

DATED 12/20/76


JAMES D. MCMILLEN
Plaintiff Pro Se
309 Anderson Building
Lincoln, Nebraska

TRANSCRIPT OF THE JUDGMENT

2-10-77
file with Clerk
Copy to Plaintiff
Copy to Clerk
U.S. DISTRICT COURT
N.D. N.Y.
FILED
FEB 10 1977
AT O'CLOCK
J. R. SCULLY, Clerk
ALBANY
75-CV-427

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK

3 JAMES D. McMILLAN,

4 Plaintiff,

5 VS

6 LOUIS J. LEFKOWITZ, Individually and as the
7 Attorney General of The State of New York
8 and THE STATE OF NEW YORK,

9 Defendants.

10 TRANSCRIPT OF DIRECTED VERDICT of

11 Hon. James T. Foley in the above-entitled matter held on
12 the 19th day of November 1976 at the Federal Building,
13 Albany, New York.

14 APPEARANCES:

15 JAMES D. McMILLAN, Pro se.

16 LOUIS J. LEFKOWITZ, Attorney General
17 of The State of New York,
18 By: DOUGLAS S. DALES, JR., Assistant
19 Attorney General.
20
21
22
23
24
25

THE COURT: Ladies and Gentlemen,
ordinarily in a jury trial, if you have sat on any, I
suppose some of you have, at this stage we have summations
and charge on the law that instructs you the principles
you must follow. But in this case I am going to take the
case away from you for your deliberations on the facts and
so forth, and I brought you into the courtroom because it
is a serious decision to make, and I have worked on it
during the lunch hour and I am going to state in front of you
and for the record, the reasons why I am taking this
particular approach.

Now, this case, and I hope you found
it fairly interesting, is an unusual one because it is
brought under an old statute that was enacted by the
Congress in 1871. But that makes no difference because the
old statutes sometimes are better than the new ones that we
pass in these modern times. But anyway, to recover, this
plaintiff, acting as his own counsel, must prove under our
principles of law by a fair preponderance of the evidence
that he was deprived of any rights, privileges or immunities
secured by the United States Constitution and Federal laws.
That is why the case is here before us in this United States
District Court. In my judgement, and I went over the notes
I had last night and went back over them again during the
two hour luncheon period we had, he has not met this burden

that is imposed upon him, so motions, and they are legal motions, were made for a directed verdict that would dismiss the case as far as the single defendant we have, the Attorney General, Louis J. Lefkowitz. They were made out in your presence at the end of the plaintiff's evidence, and they were renewed at the close or the end of the entire evidence.

So to start quickly, these motions are granted and a judgment upon this directed verdict shall be entered in favor of the single defendant, Attorney General Louis J. Lefkowitz, dismissing the complaint and the several claims therein in their entirety.

Now, the grounds offered to support this granting ^{of} ~~and~~ these motions were specifically stated as they must be under Federal Rule of Civil Procedure 50(a). Those grounds and reasons are accepted by me as ones justifying a grant of the relief requested.

Now, it should be noted in this decision for this record that in a previous motion in this district court, District Judge Port, by order of October 31, 1975, granted a motion to dismiss the complaint in this case against the State of New York but he denied the motion to dismiss against the Attorney General, and that denial, of course, necessitated the four day trial that we have had on the issues presented.

Now, as I said, it is a difficult

1 decision. I have only done it rarely, maybe five times in
2 a long career, to take away from the jury, the customary
3 right to pass upon and decide factual issues. But in this
4 instance it is my firm conviction from the evidence
5 presented there will be no rational basis to return a verdict
6 in money damages for plaintiff's claims of constitutional
7 deprivation. I cite a case now: See Stief against J.A.
8 Sexauer, 380 F.2d, 453. I think that is a Second Circuit
9 case, 1967. So in my judgment, without weighing the
10 credibility of the witnesses or otherwise considering the
11 weight of the evidence, there can be but one conclusion
12 that reasonable men and women like yourselves could reach,
13 and that only would be that despite the difficulties and
14 unpleasantness encountered by the plaintiff as he brought
15 forth his proof and described it have not been proven to
16 have violated any federal constitutional right. And, of
17 course, in proving those deprivations or violations he has
18 to do it by a preponderance of evidence as envisioned by
19 the wording of 42 United States Code 1983.

20 It is part of our system then, investigations do
21 take place. There are hardships. Any one of us might have
22 to undergo these things that are not too pleasant to have
23 part of our lives. Now, this plaintiff here in his state-
24 ments during the trial, and I inquired because I wanted to
25 be careful about it, he narrows his claims, at least as I

understood them, to constitutional deprivations that occurred during this investigation that we know about by the Attorney General's office of the State of New York. The claims, at least as I comprehend them, are that he was the victim of an unreasonable search and seizure; his records were obtained by an improper subpoena, and you recall that part of the testimony, and thereby, his due process of law rights were violated. And, also, one of his claims is that he was subjected to harrassment and unfair and inaccurate publicity that destroyed his business, and ^{we know} that this type of publicity is one of the great problems of the day, fair trial and free press, that it was given out by the Attorney General's office.

Now, in regard to these claims, it must be kept in mind that the Attorney General, acting as a prosecutor, and there was a criminal prosecution later that was unsuccessful, but in that respect there is absolute immunity under a Supreme Court case, ^{PATCHMAN} Imbler v Patchman, 424 U.S.409, 1976, I believe. And that immunity, of course, if he became involved, and the testimony was that he might wear two hats, as Attorney Generals do in most of the States, his administrative and investigative obligations are to be treated differently. But the prime fact is, there is no showing that any alleged unconstitutional methods that might have occurred or been used in the investigation were known or sanctioned by the Attorney General personally and were continued and

occurred with his knowledge and approval. It is law again, to recover money damages under this old federal statute 1983 the general doctrine of what we call in Latin terms respondeat superior does not suffice and personal responsibility must be proven. And to my mind the evidence does not prove those facts.

The case law that supports that statement is Johnson v Glick, 481 F.2d, 1028, 2d Cir. 1973, cert. denied 414 U.S. 1033; Scolnik^C v Lefkowitz, 329 F.2d, 716, 2d. Cir. 1964; Black v. U. S., 534 F.2d, 5²4, 2d Cir. 1976.

Now, in regard to derogatory or inaccurate or exaggerated information being disseminated to the media and public, and no one likes to have that happen, ~~by~~^{by} any public agency, it also has been specifically held that such conduct if it did occur, and of course there is a dispute whether it did or not, such a claim cannot be upheld under⁴² United States Code 1983. And that decision was written very recently in Paul v Davis, 44 U.S. Law Week, 4337, March 23, 1976.

Finally, after my review, and it is my conviction again, there is no proof or evidence at all offered on behalf of the plaintiff, or any in the record, that legally favors him, that would justify submission to a jury like yourselves to assess a proper amount of money damages. It would be speculative, in the highest degree to base it upon

statements made to a newspaper that have no foundation at all one way or the other as far as the record in this case is concerned from business records.

So for these factual and legal reasons stated, it is clear, at least to me, that the motions for directed verdict must be and are granted, and judgment will enter accordingly.

Now, ladies and gentlemen, I am sincere about this, I would be remiss if I did not remark that during the jury trial, and I have presided at probably hundreds, I don't want to count them all, there was a remarkable demonstration by this plaintiff, not a lawyer, trying his own case. This type of thing, of course, is never encouraged. I always try to discourage it. But I must say that this plaintiff, McMillan, is sincere and obsessed in some respect with his cause, presented his case capably and really in a professional manner. And the thing that I have high regard for is that he did it with absolute courtesy and respect for the Court. He has trained himself in a knowledge of the federal law, and, I guess, also of the State law.

So my decision, of course, can be taken to higher courts if I am in error, but a trial like this, and I suppose you wonder why we were here at this time three days, but at least it shows the greatness of the judicial system in this country and why it is such an important asset in our govern-

ment, that every citizen. it has been proven under a national scale if he has just cause, can call the highest ones in the authority of government to account for their conduct.

Now, with those statements, of course, there have been things not necessary to my legal ruling, but my legal ruling, as I said, takes the case out of your hands. So I am going to excuse you now and thank you for the time you spent during the trial. I know you gave attention to it. I will ask you to return Monday morning at 9 30. We have another case lined up to start. Thank you.

Mr. McMillan, to advise you, sir, what happens now is that the Clerk will make a docket entry as soon as possible, either today or Monday, directing judgment in favor of the defendant and dismissing the complaint. But I want to advise you that you have thirty days to file a notice of appeal from this ruling when a docket entry is made.

Are there any questions you may have?

MR. McMILLAN: No, sir.

THE COURT: O.K. So we will stand in recess.

- - - - -